

Internal Deliberative Draft

1 **Part 50**

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

3 **§50.1 Purpose, authority, and applicability.**

4 (a) This part implements the policies of the National Environmental Policy Act (NEPA) and other
5 environmental requirements (as specified in §50.4).

6 (b) NEPA (42 U.S.C. 4321 *et seq.*), establishes national policy, goals and procedures for protecting,
7 restoring and enhancing environmental quality. NEPA is implemented by Executive Order 11514 of March
8 5, 1970, (3 CFR, 1966-1970 Comp., p. 902) as amended by Executive Order 11991 of May 24, 1977, (3
9 CFR, 1977 Comp., p. 123) and by the Council on Environmental Quality (CEQ) Regulations, 40 CFR
10 parts 1500-1508.

11 (c) The regulations issued by CEQ at 40 CFR parts 1500-1508 establish the basic procedural
12 requirements for compliance with NEPA. These procedures are to be followed by all Federal agencies
13 and are incorporated by reference into this part. This part, therefore, provides supplemental instructions
14 to reflect the particular nature of HUD programs, and is to be used in tandem with 40 CFR parts 1500-
15 1508 and regulations that implement authorities cited at §50.4.

16 (d) These regulations apply to all HUD policy actions (as defined in §50.16), and to all HUD project
17 actions (see §50.2(a)(2)). Also, they apply to projects and activities carried out by recipients subject to
18 environmental policy and procedures of 24 CFR part 58, when the recipient that is regulated under 24
19 CFR part 58 claims the lack of legal capacity to assume the Secretary's environmental review
20 responsibilities and the claim is approved by HUD, ~~or~~ when HUD determines to conduct an
21 environmental review itself in place of a nonrecipient responsible entity, or when HUD rejects the use of a
22 responsible entity to conduct the environmental review in a particular case for one or more of the
23 following reasons: on the basis of performance, timing or compatibility of objectives, to avoid duplication,
24 or in accordance with §58.77(d)(1). For programs, activities or actions not specifically identified or when
25 there are questions regarding the applicability of this part, the Assistant Secretary for Community
26 Planning and Development shall be consulted.

27 **§50.2 Terms and abbreviations.**

28 (a) The definitions for most of the key terms or phrases contained in this part appear in 40 CFR part
29 1508 and in the authorities cited in §50.4.

30 The following definitions also apply to this part:

31 Choice limiting action means an action that may have an adverse impact on the environment or limit
32 the choice of reasonable alternatives. A choice limiting action may include, but is not limited to, real
33 property acquisition, demolition, disposition, rehabilitation, repair, new construction, site preparation or
34 clearance, lead abatement, asbestos abatement, ground disturbance, and leasing. Activities listed in
35 section 58.35(b) of this part and site studies and assessments that will not have an environmental impact,
36 including Phase I and Phase II Environmental Site Assessments, minimal associated soil boring, and
37 wetlands delineations, are not choice limiting actions. Conditional contracts and options to acquire real
38 property are not choice limiting if they are properly conditioned on completion of a satisfactory
39 environmental review.

Internal Deliberative Draft

1 Disaster means a Presidentially declared disaster or a local emergency that has been declared by
2 the chief elected official of the responsible entity.

3 *Environmental review* means a process for complying with NEPA (through an EA or EIS) and/or with
4 the laws and authorities cited in §50.4.

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

7 Multifamily means residential construction with five or more units.

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

10 Single family means residential construction with one to four units.

11 ~~Unit Density refers to a change in the number of dwelling units. Where a threshold is identified as a~~
12 ~~percentage change in unit density that triggers review requirements, no distinction is made between an~~
13 ~~increase or a decrease in density.~~

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

15 *AS/CPD*—Assistant Secretary for Community Planning and Development.

16 *CEQ*—Council on Environmental Quality

17 *DECO*—Departmental Environmental Clearance Officer

18 *EA*—Environmental Assessment

19 *EIS*—Environmental Impact Statement

20 *FEO*—Field Environmental Officer

21 *FONSI*—Finding of No Significant Impact

22 *HUD*—Department of Housing and Urban Development

23 *NEPA*—National Environmental Policy Act

24 *NOI/EIS*—Notice of Intent to Prepare an Environmental Impact Statement

25 *PECO*—Program Environmental Clearance Officer

26 *REO*—Regional Environmental Officer

27 **§50.3 Environmental policy.**

Internal Deliberative Draft

1 (a) It is the policy of the Department to reject proposals which have significant adverse
2 environmental impacts and to encourage the modification of projects in order to enhance environmental
3 quality and minimize environmental harm.

4 (b) The HUD approving official shall consider environmental and other Departmental objectives in
5 the decisionmaking process.

6 (c) When EA's or EIS's or reviews under §50.4 reveal conditions or safeguards that should be
7 implemented once a proposal is approved in order to protect and enhance environmental quality or
8 minimize adverse environmental impacts, such conditions or safeguards must be included in agreements
9 or other relevant documents.

10 (d) A systematic, interdisciplinary approach shall be used to assure the integrated use of the natural
11 and social sciences and the environmental design arts in making decisions.

12 (e) Environmental impacts shall be evaluated on as comprehensive a scale as is practicable.

13 (f) HUD offices shall begin the environmental review process at the earliest possible time so that
14 potential conflicts between program procedures and environmental requirements are identified at an early
15 stage.

16 (g) Applicants for HUD assistance shall be advised of environmental requirements and consultation
17 with governmental agencies and individuals shall take place at the earliest time feasible.

18 (h) For HUD grant programs in which the funding approval for an applicant's program must occur
19 before the applicant's selection of properties, the application shall contain an *assurance* that the applicant
20 agrees to assist HUD to comply with this part and that the applicant shall:

21 (1) Supply HUD with all available, relevant information necessary for HUD to perform for each
22 property any environmental review required by this part;

23 (2) Carry out mitigating measures required by HUD or select alternate eligible property; and

24 (3) Not acquire, rehabilitate, convert, lease, repair or construct property, ~~nor~~ commit or expend HUD
25 or local funds, nor commit any choice limiting actions as defined in section 50.2 for these program
26 activities with respect to any eligible property, until HUD approval of the property is received.

27 ~~(i)(1) It is HUD policy that all property proposed for use in HUD programs be free of hazardous~~
28 ~~materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could~~
29 ~~affect the health and safety of occupants or conflict with the intended utilization of the property.~~

30 ~~(2) HUD environmental review of multifamily and non-residential properties shall include evaluation~~
31 ~~of previous uses of the site and other evidence of contamination on or near the site, to assure that~~
32 ~~occupants of proposed sites are not adversely affected by the hazards listed in paragraph (i)(1) of this~~
33 ~~section.~~

34 ~~(3) Particular attention should be given to any proposed site on or in the general proximity of such~~
35 ~~areas as dumps, landfills, industrial sites or other locations that contain hazardous wastes.~~

36 ~~(4) HUD shall require the use of current techniques by qualified professionals to undertake~~
37 ~~investigations determined necessary.~~

Internal Deliberative Draft

1 §50.4 Related Federal laws and authorities.

2 HUD and/or applicants must comply, where applicable, with all environmental requirements,
3 guidelines and statutory obligations under the following authorities and HUD standards:

4 (a) *Historic properties.* (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), as
5 amended.

6 (2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971
7 (3 CFR, 1971-1975 Comp., p. 559).

8 (3) The Archaeological and Historic Preservation Act of 1974, which amends the Reservoir Salvage
9 Act of 1960 (16 U.S.C. 469 *et seq.*).

10 (4) Procedures for the Protection of Historic and Cultural Properties (Advisory Council on Historic
11 Preservation—36 CFR part 800).

12 (5) Findings of no potential to cause effects to historic properties. In accordance with Section 106 of
13 the National Historic Preservation Act [54 U.S.C. § 300101 *et seq.*] and its implementing regulations at 36
14 CFR 800.3(a)(1), HUD has determined that the following type of activities have no potential to cause
15 effects to historic properties and no further review under Section 106 is required.

16 (i) Rehabilitation or renovation of an existing building or property in residential use that was built
17 within the previous 45 years where all the following apply:

18 (a) The proposed project does not involve transfer, demolition, new construction, expansion of
19 the height or footprint of an existing building, or ground disturbance beyond maintenance;

20 (b) The project is otherwise categorically excluded from NEPA pursuant to 50.20(a); and

21 (c) No extraordinary circumstances as described in 50.20(c) apply.

22 (ii) Other activities as HUD designates through memorandum signed by the DECO.

23 (b) *Flood insurance, floodplain management and wetland protection.* (1) Flood Disaster Protection
24 Act of 1973 (42 U.S.C. 4001-4128) and the National Flood Insurance Reform Act of 1994 (Pub.L. 103-
25 325, 108 Stat. 2160).

26 (2) HUD procedure for the implementation of Executive Order 11988 (Floodplain Management), (3
27 CFR, 1977 Comp., p. 117)—24 CFR part 55, Floodplain Management and Protection of Wetlands.

28 (3) HUD procedure for the implementation of Executive Order 11990 (Protection of Wetlands), (3
29 CFR, 1977 Comp., p. 121)—24 CFR part 55, Floodplain Management and Protection of Wetlands.

30 (c) *Coastal areas protection and management.* (1) The Coastal Barrier Resources Act, as amended
31 by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501 *et seq.*).

32 (2) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended.

33 (d) *Sole source aquifers.* The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 *et seq.*, and 21
34 U.S.C. 349), as amended. (See 40 CFR part 149.)

Internal Deliberative Draft

1 (e) *Endangered species*. The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as
2 amended. (See 50 CFR part 402.)

3 (f) *Wild and scenic rivers*. The Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*), as amended.

4 (g) *Water quality*. The Federal Water Pollution Control Act, as amended by the Federal Water
5 Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), and later enactments.

6 (h) *Air quality*. (1) The Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended; particularly section
7 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

8 (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans
9 (Environmental Protection Agency—40 CFR parts 6, 51, and 93). The Clean Air Act (42 U.S.C. 7401 *et*
10 *seq.*), as amended. (See 40 CFR parts 6, 51, and 93.)

11 (i) *Solid waste management*. (1) The Solid Waste Disposal Act, as amended by the Resource
12 Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*), and later enactments.

13 (2) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42
14 U.S.C. 9601 *et seq.*), as amended.

15 (j) *Farmlands protection*. The Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*), as
16 amended. (See 7 CFR part 658.)

17 (k) *HUD environmental standards*. (1) Applicable criteria and standards specified in HUD
18 environmental regulations (24 CFR part 51).

19 (2) (i) Also, it is HUD policy that all property proposed for use in HUD programs be free of hazardous
20 materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could
21 affect the health and safety of occupants or conflict with the intended utilization of the property.

22 (ii) HUD environmental review of multifamily and non-residential properties shall include evaluation
23 of previous uses of the site and other evidence of contamination on or near the site, to assure that
24 occupants of proposed sites are not adversely affected by the hazards listed in paragraph (i)(1) of this
25 section.

26 (iii) Particular attention should be given to any proposed site on or in the general proximity of such
27 areas as dumps, landfills, industrial sites or other locations that contain hazardous wastes.

28 (iv) HUD shall require the use of current techniques by qualified professionals to undertake
29 investigations determined necessary.

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

32

33 [61 FR 50916, Sept. 27, 1996, as amended at 78 FR 68728, Nov. 15, 2013]

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

Internal Deliberative Draft

1 §50.10 Basic environmental responsibility.

2 (a) It is the responsibility of all Assistant Secretaries, the General Counsel, and the HUD approving
3 official to assure that the requirements of this part are implemented.

4 (b) The Assistant Secretary for Community Planning and Development (A/S CPD), represented by
5 the Office of ~~Community Viability~~ Environment and Energy, whose Director shall serve as the
6 Departmental Environmental Clearance Officer (DECO), is assigned the overall Departmental
7 responsibility for environmental policies and procedures for compliance with NEPA and the related laws
8 and authorities. To the extent permitted by applicable laws and the CEQ regulations, the A/S CPD shall
9 approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

10 §50.11 Responsibility of the HUD approving official.

11 (a) The HUD approving official shall make an independent evaluation of the environmental issues,
12 take responsibility for the scope and content of the compliance finding, EA or EIS, and make the
13 environmental finding, where applicable. (Also, see §50.32.)

14 (b) Copies of environmental reviews and findings shall be maintained in the project file for projects,
15 in the rules docket files for FEDERAL REGISTER publications, and in program files for non-FEDERAL
16 REGISTER policy documents.

17 Subpart C—General Policy: Decision Points

18 §50.16 Decision points for policy actions.

19 Either an EA and FONSI or an EIS on all policy actions not meeting the criteria of §50.19 shall be
20 completed prior to the approval action. Policy actions include all proposed FEDERAL REGISTER policy
21 documents and other policy-related Federal actions (40 CFR 1508.18). The decision as to whether a
22 proposed policy action is categorically excluded from an EA shall be made by the Program Environmental
23 Clearance Officer (PECO) in Headquarters as early as possible. Where the PECO has any doubt as to
24 whether a proposed action qualifies for exclusion, the PECO shall request a determination by the
25 AS/CPD. The EA and FONSI may be combined into a single document.

26 §50.17 Decision points for projects.

27 Either an EA and FONSI or an EIS for individual projects shall be completed before the applicable
28 program decision points below for projects not meeting the criteria of §50.20. Projects that are
29 categorically excluded under section 50.20 shall document Cc compliance with applicable authorities cited
30 in §50.4 ~~shall be completed~~ before the applicable program decision points below ~~unless the project meets~~
31 ~~the criteria for exclusion under §50.19.~~

32 (a) From the time of initial contact with HUD until HUD has completed the environmental review
33 process, certain activities or actions cannot be taken by the applicant or any direct or indirect party to the
34 transaction. Initial contact may include submission of an application or pre-application, concept meetings,
35 or other meetings or correspondence with HUD regarding a specific project or proposal. Specifically, no
36 action concerning the proposal shall be taken prior to completion of the environmental review which could
37 have an adverse environmental impact, prejudice the ultimate decision of the proposal, or constitute a
38 choice limiting action.

39
40 (b) An environmental review is complete when:
41

Internal Deliberative Draft

1 (i) compliance with applicable authorities cited in §50.4 is documented or mitigation measures
2 and conditions to bring the project into compliance have been designed, made binding on the
3 project, and conveyed to project documents and agreements; and

4
5 (ii) the approving official has certified the environmental review record, including all findings and
6 determinations required by this part.

7
8 (c) The decision point for a project is generally the initial HUD approval of the specific site, action, or
9 project. Program offices shall designate decision points through program guidance with DECO approval.

10 ~~(a) *New Construction.* (1) Project mortgage insurance or other financial assistance for multifamily~~
11 ~~housing projects (including sections 202 and 811), nursing homes, hospitals, group practice facilities and~~
12 ~~manufactured home parks: Issuance of Site Appraisal and Market Analysis (SAMA) Letter or initial~~
13 ~~equivalent indication of HUD approval of a specific site;~~

14 ~~(2) *Public Housing:* HUD approval of the proposal.~~

15 ~~(3) *Loan Guarantee Recovery Fund Program (24 CFR part 573).* HUD issuance of a letter of~~
16 ~~commitment or initial equivalent indication of HUD approval.~~

17 ~~(b) *Rehabilitation projects.* Use the decision points under “new construction” for HUD programs cited~~
18 ~~in paragraph (a) of this section; otherwise the decision point is the HUD project approval.~~

19 ~~(c) *Public housing modernization programs.* HUD approval of the modernization grants.~~

20 ~~(d) *Property Disposition.* Multifamily structures, college housing, nursing homes, manufactured~~
21 ~~homes and parks, group practice facilities, vacant land and one to four family structures: HUD approval of~~
22 ~~the Disposition Program.~~

23 ~~(e) *HUD programs subject to 24 CFR part 58.* For cases in which HUD exercises environmental~~
24 ~~responsibility under this part where a recipient lacks legal capacity to do so or HUD determines to do so~~
25 ~~in place of a nonrecipient responsible entity under 24 CFR part 58 (see §50.1(d)), the decision point is:~~
26 ~~HUD's execution of an agreement or contract, whichever comes first, or in the case of Section 8 Project-~~
27 ~~Based Certificate Assistance and Moderate Rehabilitation, HUD notification to the Public Housing Agency~~
28 ~~to proceed with execution of an Agreement to Enter into Housing Assistance Payments (HAP) Contract.~~

29 (f) *Section 50.3(h).* Notwithstanding the other paragraphs of this section, the decision point for grant
30 programs in which HUD approval of funding for an applicant's program must occur before the applicant's
31 selection of properties for use in its program is: HUD approval of specific properties.

32 ~~(g) *Stewart B. McKinney Homeless Assistance Act Programs.* Where the recipients are nonprofit~~
33 ~~organizations or governmental entities with special or limited purpose powers, the decision point is: HUD~~
34 ~~project approval.~~

35 ~~(h) *Programs not specifically covered in this section.* Consult with the AS/CPD for decision points.~~

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

37 **§50.18 General.**

Internal Deliberative Draft

1 (a) The ~~Departmental Environmental Clearance Officer (DECO)~~ shall establish a prescribed format
2 to be used to document compliance with NEPA and the Federal laws and authorities cited in §50.4. The
3 DECO may prescribe alternative formats as necessary to meet specific program needs.

4 (b) HUD may, from time to time, complete programmatic reviews that further avoid the necessity of
5 complying with the laws and authorities in §50.4 on a property-by-property basis.

6 [61 FR 50916, Sept. 27, 1996, as amended at 79 FR 49228, Aug. 20, 2014]

7 **§50.19 Categorical exclusions not subject to the Federal laws and authorities cited in §50.4.**

8 (a) *General.* The activities and related approvals of policy documents listed in paragraphs (b) and
9 (c) of this section are not subject to the individual compliance requirements of the Federal laws and
10 authorities cited in §50.4, unless otherwise indicated below. These activities and approvals of policy
11 documents are also categorically excluded from the EA required by NEPA except in extraordinary
12 circumstances (§50.20(b)). HUD approval or implementation of these categories of activities and policy
13 documents does not require environmental review, because they do not alter physical conditions in a
14 manner or to an extent that would require review under NEPA or the other laws and authorities cited at
15 §50.4.

16 (b) *Activities.* (1) Environmental and other studies, resource identification and the development of
17 plans and strategies.

18 (2) Information and financial advisory services.

19 (3) Administrative and management expenses.

20 (4) Public services that will not have a physical impact or result in any physical changes, including
21 but not limited to services concerned with employment, crime prevention, child care, health, drug abuse,
22 education, counseling, energy conservation and welfare or recreational needs.

23 (5) Inspections and testing of properties for hazards or defects or archaeological surveys for cultural
24 resources.

25 (6) Purchase of insurance.

26 (7) Purchase of tools.

27 (8) Engineering or design costs.

28 (9) Technical assistance and training.

29 (10) Assistance for temporary or permanent improvements that do not alter environmental
30 conditions and are limited to protection, repair or restoration activities necessary only to control or arrest
31 the effects from disasters or imminent threats to public safety including those resulting from physical
32 deterioration.

33 (11) Tenant-based rental assistance and tenant-based leasing.

Internal Deliberative Draft

1 (12) Supportive services including, but not limited to, health care, housing services, permanent
2 housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and
3 assistance in gaining access to local, State, and Federal government benefits and services.

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

7 (14) Economic ~~development~~ activities without physical impacts, including but not limited to,
8 equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not
9 associated with construction, rehabilitation, or physical expansion of existing facilities; however, in the
10 case of equipment purchase, compliance with §50.4(b)(1) is required.

11 (15) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under
12 construction (meaning the foundation is already in place at the time of the environmental review),
13 including closing costs and downpayment assistance, interest buydowns, and similar activities that result
14 in the transfer of title.

15 (16) Housing pre-development costs including legal, consulting, developer and other costs related to
16 site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and
17 other related activities which do not have a physical impact.

18 (17) HUD's insurance of one-to-four family mortgages under the Direct Endorsement program, the
19 insurance of one-to-four family mortgages under the Lender Insurance program, and HUD's guarantee of
20 loans for one-to-four family dwellings under the Direct Guarantee procedure for the Indian Housing loan
21 guarantee program, without any HUD review or approval before the completion of construction or
22 rehabilitation and the loan closing; and HUD's acceptance for insurance of loans insured under Title I of
23 the National Housing Act; however, compliance with §§50.4(b)(1) and (c)(1) and 24 CFR 51.303(a)(3) is
24 required.

25 (18) HUD's endorsement of one-to-four family mortgage insurance for proposed construction under
26 Improved Area processing; however, the Appraiser/Review Appraiser Checklist (Form HUD-54891)
27 must be completed.

28 (19) Activities of the Government National Mortgage Association under Title III of the National
29 Housing Act (12 U.S.C. 1716 *et seq.*).

30 (20) Activities under the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 *et seq.*).

31 (21) Refinancing of HUD-insured mortgages that will not allow new construction or rehabilitation, nor
32 result in any physical impacts or changes except for routine maintenance; however, compliance with
33 §50.4(b)(1) is required.

34 (22) Approval of the sale of a HUD-held mortgage.

35 (23) Approval of the foreclosure sale of a property with a HUD-held mortgage; however, appropriate
36 restrictions will be imposed to protect historic properties.

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

Internal Deliberative Draft

1 impacts or changes except for routine maintenance; however, compliance with §§50.4 (b)(1) and (c)(1)
2 and 51.303(a) is required.

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

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

8 (ii) Establish, revise, or provide for standards for construction or construction materials,
9 manufactured housing, or occupancy.

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

12 (3) Approval of policy documents that set out fair housing or nondiscrimination standards or
13 enforcement procedures or provide for assistance in promoting or enforcing fair housing or
14 nondiscrimination;

15 (4) Approval of handbooks, notices and other documents that provide operating instructions and
16 procedures in connection with activities under a FEDERAL REGISTER document that has previously been
17 subject to a required environmental review.

18 (5) Approval of a Notice of Funding Availability (NOFA) that provides funding under, and does not
19 alter any environmental requirements of, a regulation or program guideline that was previously published
20 in the FEDERAL REGISTER, provided that

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

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

25 (6) Statutorily required and/or discretionary establishment and review of interest rates, loan limits,
26 building cost limits, prototype costs, fair market rent schedules, HUD-determined prevailing wage rates,
27 income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or
28 rental assistance, and similar rate and cost determinations and related external administrative or fiscal
29 requirements or procedures which do not constitute a development decision that affects the physical
30 condition of specific project areas or building sites.

31 [61 FR 50916, Sept. 27, 1996, as amended at 62 FR 15802, Apr. 2, 1997; 63 FR 48990, Sept. 11, 1998; 68 FR
32 56127, Sept. 29, 2003]

33 **§50.20 Categorical exclusions subject to the Federal laws and authorities cited in §50.4.**

34 (a) The following actions, activities, and programs are categorically excluded from the NEPA
35 requirements for further review in an Environmental Assessment or an Environmental Impact Statement
36 as set forth in this part. They are not excluded from individual compliance requirements of other
37 environmental statutes, Executive orders, and HUD standards cited in §50.4, where appropriate. Where
38 the responsible official determines that any proposed action identified below may have an environmental

Internal Deliberative Draft

1 effect because of extraordinary circumstances (see § 50.20(c), 40 CFR 1508.4), the requirements for
2 further review under NEPA shall apply (see paragraph (b) of this section).

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

5 (2) Rehabilitation of existing residential and nonresidential buildings and improvements when the
6 following conditions are met:

7 (i) The size or capacity of the building(s) or number of units are not increase more than 20 percent;
8 and

9 (ii) The project does not result in a change in land use, such as from non-residential to residential or
10 commercial to industrial.

11 ~~(i) In the case of a building for residential use (with one to four units), the density is not increased~~
12 ~~beyond four units, the land use is not changed, and the footprint of the building is not increased in a~~
13 ~~floodplain or in a wetland;~~

14 ~~(ii) In the case of multifamily residential buildings:~~

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

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

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

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

20 ~~(A) The facilities and improvements are in place and will not be changed in size nor capacity by~~
21 ~~more than 20 percent; and~~

22 ~~(B) The activity does not involve a change in land use, such as from non-residential to residential,~~
23 ~~commercial to industrial, or from one industrial use to another. (3)(i) An individual action on up to four~~
24 ~~dwelling units where there is a maximum of four units on any one site. The units can be four one-unit~~
25 ~~buildings or one four-unit building or any combination in between; or~~

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

28 ~~(iii) Paragraphs (a)(3)(i) and (ii) of this section do not apply to rehabilitation of a building for~~
29 ~~residential use (with one to four units) (see paragraph (a)(2)(i) of this section).~~

30 (4) Acquisition, (including leasing), refinance, project-based vouchers, project-based rental
31 assistance, equity loans, or disposition, long-term contract renewal, or any change in ownership or control
32 of, or equity loans on an existing structure, or acquisition (including leasing) of vacant landproperty
33 provided that the structure or landproperty acquired, financed, or disposed of will be retained for the same
34 use.

Internal Deliberative Draft

1 (5) Purchased or refinanced housing and medical facilities under section 223(f) of the National
2 Housing Act (12 U.S.C. 1715n) and section 184(?).

3 (6) Mortgage prepayments or plans of action (including incentives) under 24 CFR part 248.

4 (AA) Acquisition, repair, improvement, reconstruction, minor enhancement or rehabilitation of public
5 facilities and improvements (other than buildings) when the facilities and improvements are in place and
6 the size or capacity will not change more than 20 percent. Activities may include replacement of water or
7 sewer lines, reconstruction of curbs and sidewalks, repaving of streets, improvements (other than
8 buildings) to park space, and adding landscaping and design features.

9 (BB) Acquisition of properties and the associated demolition, removal, and/or relocation of structures
10 or utilities when the acquisition is from a willing seller, the buyer coordinated acquisition planning with
11 affected authorities, and the acquired property will be dedicated in perpetuity to uses that are compatible
12 with open space, recreational practices, or floodplain or wetland preservation.

13 (CC) Single family residential new construction of up to 10 residential dwelling units where all of the
14 following conditions are met:

15 (i) The site is in a developed area and/or a previously developed site,

16 (ii) The structure and proposed use are compatible with existing, applicable Federal, tribal, state,
17 and local planning and zoning standards, and

18 (iii) In making this determination, HUD shall consider both the current proposed project and any
19 other proposed construction actions contemplated by the applicant, recipient, or locality. In no case shall
20 more than 10 units of new construction be constructed under this categorical exclusion.

21 (iii) The proposed use will not substantially increase the number of motor vehicles at the site or in
22 the area.

23 (iv) The site and scale of construction are consistent with those of existing, adjacent, or nearby
24 buildings.

25 (v) The construction will not exceed existing support infrastructure capacities (roads, sewer, water,
26 parking, etc.), and

27 –(DD) Demolition and removal of scattered non-historic single family residential structures and
28 disposal of debris therefrom in accordable with applicable regulations, including those regulations
29 applying to removal of asbestos containing materials, polychlorinated biphenyls, lead-based paint, and
30 other special hazard items. Structures are considered scattered if all structures aggregated in this project
31 and any other demolition actions contemplated by the applicant, recipient, or locality are sufficiently
32 disperse that they can be removed without substantially changing the character of the surrounding area.

33 (EE) Reconstruction of any structure or improvements following a federally or locally declared
34 disaster in a manner that substantially conforms to the pre-disaster design, function, and location.
35 Activities shall include mitigation measures designed to make the reconstructed structure or
36 improvements more resilient to future damage.

37 (YY) A proposed action to address a federally or locally declared disaster recovery need, when the
38 proposed action fits within a categorical exclusion established by another federal agency where (i) the
39 categorical exclusion established by another federal agency being utilized is documented in the

Internal Deliberative Draft

1 environmental review record, (ii) the reliance on another federal agency's categorical exclusion is
2 approved by both HUD and the federal agency that originated the categorical exclusion, and (iii) the
3 responsible entity confirms that there are no extraordinary circumstances, as defined in this section or the
4 other federal agency's procedures, that would preclude the use of the categorical exclusion.

5 (FF) Combinations of the above activities.

6 (b) Categorical exclusions not subject to Section 106 of the National Historic Preservation Act. In
7 accordance with Section 106 of the National Historic Preservation Act [54 U.S.C. § 300101 et seq.] and
8 its implementing regulations at 36 CFR 800.3(a)(1), HUD has determined that the following type of activity
9 has no potential to cause effects to historic properties and no further review under Section 106 is
10 required.

11 (1) Rehabilitation or renovation of an existing building or property in residential use that was built
12 within the previous 45 years where all the following apply:

13 (i) The proposed project does not involve transfer, demolition, new construction, expansion of the
14 height or footprint of an existing building, or ground disturbance beyond maintenance; and

15 (ii) The project is otherwise categorically excluded from NEPA pursuant to 50.20(a).

16
17 (b) For categorical exclusions having the potential for significant impact because of extraordinary
18 circumstances, HUD must prepare an EA in accordance with subpart E. If it is evident without preparing
19 an EA that an EIS is required pursuant to §50.42, HUD should proceed directly to the preparation of an
20 EIS in accordance with subpart F. Extraordinary circumstances include, but are not limited to:

21 (1) Impacts that are potentially adverse, significant, uncertain, or that involve unique or unknown
22 risks, including but not limited to impacts to property (including sites, buildings, structures, and objects) of
23 historic, archaeological, or architectural significance; floodplains; wetlands; endangered species; park,
24 recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or
25 principal drinking water aquifers; prime farmlands; national monuments; migratory birds; and other
26 ecologically significant or critical areas.

27 (2) Proposed actions where the location could have a potentially adverse, significant, or uncertain
28 impacts, or involve unique or unknown risks to residents and occupants of the project, including but not
29 limited to new residential construction in floodplains or sites where hazardous materials, contamination,
30 toxic chemicals and gases, or radioactive substances could affect the health and safety of occupants or
31 conflict with the intended utilization of the property.

32 (3) Proposed actions that do not comply with section 50.17, Decision points for projects, or that that
33 have at any time violated any existing Federal, State, or local government environmental or cultural law,
34 policy, or requirements.

35 (4) Proposed actions that have a direct relationship to other actions with individually insignificant but
36 cumulatively significant environmental effects. For example, a single demolition may be categorically
37 excluded pursuant to subsection 50.20(a)(DD), but the same projects would require an EA due to
38 extraordinary circumstances if it contributes towards a program or pattern of demolition actions that
39 cumulatively have a significant impact on the character of the area.

40 (5) Proposed actions that are substantially similar to those that normally require an EIS.

Internal Deliberative Draft

1 [61 FR 50916, Sept. 27, 1996, as amended at 68 FR 56127, Sept. 29, 2003; 79 FR 49229, Aug. 20, 2014]

2 **§50.21 Aggregation.**

3 Activities which are geographically related and are logical parts of a composite of contemplated
4 HUD projects shall be evaluated together.

5 **§50.22 Environmental management and monitoring.**

6 An Environmental Management and Monitoring Program shall be established prior to project
7 approval when it is deemed necessary by the HUD approving official. The program shall be part of the
8 approval document and must:

9 (a) Be concurred in by the Field Environmental ~~Clearance Officer (FECO) or Regional~~
10 ~~Environmental Officer (REO), (or in the absence of a FECOFEO or REO, by the Program Environmental~~
11 ~~Clearance Officer-PECO in Headquarters), and any cooperating agencies;~~

12 (b) Contain specific standards, safeguards and commitments to be completed during project
13 implementation;

14 (c) Identify the staff who will be responsible for the post-approval inspection; and

15 (d) Specify the time periods for conducting the evaluation and monitoring the applicant's compliance
16 with the project agreements.

17 **§50.23 Public participation.**

18 HUD shall inform the affected public about NEPA-related hearings, public meetings, and the
19 availability of environmental documents (see 40 CFR 1506.6(b)) in accordance with this section. Where
20 project actions result in a FONSI, the FONSI will be available in the project file. The local HUD field office
21 may be contacted by persons who wish to review the FONSI. In all cases, HUD shall mail notices to those
22 who have requested them. Additional efforts for involving the public in specific notice or compliance
23 requirements shall be made in accord with the implementing procedures of the laws and authorities cited
24 in §50.4. Notices pertaining to an EIS or an amendment to an EIS or a FONSI subject to §50.34 shall be
25 given to the public in accordance with paragraphs (a) through (d) of this section.

26 (a) A NOI/EIS shall be forwarded to the AS/CPD to the attention of the ~~Departmental Environmental~~
27 ~~Clearance Officer-DECO~~ for publication in the FEDERAL REGISTER.

28 (b) Notices will be bilingual if the affected public includes a significant portion of non-English
29 speaking persons and will identify a date when the official public involvement element of the proposed
30 action is to be completed and HUD internal processing is to continue.

31 (c) All required notices shall be published in an appropriate local printed news medium, and sent to
32 individuals and groups known to be interested in the proposed action.

33 (d) All notices shall inform the public where additional information may be obtained.

34 **§50.24 HUD review of another agency's EIS.**

Internal Deliberative Draft

1 Where another agency's EIS is referred to the HUD Field Office in whose jurisdiction the project is
2 located, the ~~Field Environmental Clearance Officer~~ FEO or REO shall determine whether HUD has an
3 interest in the EIS and, if so, will review and comment. Any EIS received from another Federal agency
4 requesting comment on legislative proposals, regulations, or other policy documents shall be sent to the
5 AS/CPD for comment, and the AS/CPD shall provide the General Counsel the opportunity for comment.

6 §50.AA Updating completed environmental reviews.

7 (a) Environmental review records are living documents, and HUD shall continue to update them as
8 appropriate. After the environmental review is complete,

9 (1) HUD shall continue to update environmental review records to document completion of any
10 required mitigation measures.

11 (2) HUD may find that circumstances change, either in the environmental conditions; anticipated
12 impacts; or the plans, designs, or financial arrangements for the project. When changes occur,
13 HUD shall follow the procedures below to determine the appropriate steps.

14 (b) Supplemental Assistance. If additional financial assistance is added to a project and there have been
15 no changes to the scope or scale of the proposal, reevaluation is generally not required. HUD shall
16 update the existing environmental review record to reflect the supplemental assistance.

17 (1) If the supplemental assistance comes from a HUD program not contemplated by the original
18 review, the update shall include the signed approval of the HUD approving official representing
19 the program providing supplemental assistance. The update shall also document compliance with
20 any additional environmental requirements imposed by the program.

21 (2) If the supplemental assistance comes from a HUD program that would normally be subject to
22 environmental policy and procedures of 24 CFR part 58, HUD should notify the responsible entity
23 and the recipient (where the recipient is not the same as the responsible entity) that HUD is
24 assuming responsibility for that environmental review to avoid duplication.

25 (c) Reevaluation. HUD shall reevaluate the environmental review record when there is a change to the
26 nature, magnitude, or extent of a project or a change in environmental conditions or anticipated impacts,
27 and the project is not yet complete.

28 (1) If the reevaluation confirms that all original findings are still valid, HUD shall update the
29 environmental review record accordingly and ensure that any additional mitigation measures are
30 made binding on the project. The update shall include a document summarizing all changes made to
31 the environmental review record. No additional notices or approvals are required.

32 (2) If the reevaluation results in change in the level of review or non-compliance with any of the
33 related laws or authorities, the original environmental review is invalid. HUD shall prepare a new
34 environmental review, including any notices and approvals, or the proposal must be denied HUD
35 assistance.

36 (d) Applicants shall promptly inform HUD of any proposed supplemental assistance, proposed changes,
37 new circumstances, or changes in environmental conditions or anticipated impacts that may require
38 updating the environmental review. To the extent practicable, they shall stop work and wait for
39 confirmation from HUD that HUD has complied with this section before proceeding with the project.

Internal Deliberative Draft

1 (e) In some cases, an existing environmental review can no longer be relied on or reevaluated, because
2 the changes are too large in scope or the environmental review record has expired. Situations where a
3 new environmental review record is required include but are not limited to: relocating the proposal to a
4 location not considered in the original environmental review; changes that would substantially increase
5 the proposal's scale or impacts; and when an environmental review record is more than 5 years old.

6 **§50.BB Adoption.**

7 When other Federal, State, or local agencies have prepared an environmental review for a proposed
8 HUD project, environmental review documents should be requested and used to the extent possible.

9
10 (a) HUD may adopt environmental reviews prepared by responsible entities pursuant to part 58 or
11 another federal agency if the proposed projects and site conditions addressed in the environmental
12 documents are substantially the same, provided that HUD:

- 13
14 (1) Independently reviews the environmental review;
15 (2) determines that the original project scope and project description applies to the current proposal;
16 (3) finds that the environmental review complies with all environmental review regulations and
17 applicable program environmental requirements; and
18 (4) maintains a record of all environmental compliance and findings.
19

20 (b) When HUD adopts an environmental review, HUD's environmental review record shall consist of a
21 documentation of the adoption certified by the HUD approving official. As necessary, HUD shall augment
22 the adopted review to be consistent with this part, 24 CFR parts 51 and 55, and other program
23 requirements. HUD shall cite the original environmental review, adopt any special conditions and
24 environmental mitigation required for the project, and ensure these requirements are conveyed into
25 project documents and agreements. HUD shall inform the agency that prepared the original review of the
26 adoption and any new mitigation measures or conditions on the project.

27 (c) If HUD determines that it is not possible to adopt the full environmental review record, HUD may adopt
28 any documents that HUD finds appropriate and incorporate them into a new environmental review
29 prepared following the procedures in this part. HUD shall independently review any relevant documents
30 and adopt only those documents that are less than 5 years old and relevant to the current proposal. The
31 environmental review record shall clearly indicate which documents were adopted.

32 33 **Subpart E—Environmental Assessments and Related Reviews**

34 **§50.31 The EA.**

35 (a) The ~~Departmental Environmental Clearance Officer (DECO)~~ shall establish a prescribed format
36 used for the environmental analysis and documentation of projects and activities under subpart E. The
37 DECO may prescribe alternative formats as necessary to meet specific program needs.

38 (b) The program representative shall obtain interdisciplinary assistance from professional experts
39 and other HUD staff as needed. Additional information may also be requested of the sponsor/applicant.
40 HUD is responsible for assessing and documenting the extent of the environmental impact. In preparing
41 an EA for a particular proposed project or other action, the program representative must:

- 42 (1) Determine existing conditions and describe the character, features and resources of the project
43 area and its surroundings; identify the trends that are likely to continue in the absence of the project.

Internal Deliberative Draft

1 (2) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions
2 that would change as a result of the project.

3 (3) Identify, analyze and evaluate all impacts to determine the significance of their effects on the
4 human environment and whether the project will require further compliance under related laws and
5 authorities cited in §50.4.

6 (4) Examine and recommend feasible ways in which the project or external factors relating to the
7 project could be modified in order to eliminate or minimize adverse environmental impacts.

8 (5) Discuss the need for the proposal, appropriate alternatives where the proposal involves
9 unresolved conflicts concerning alternative uses of available resources, the environmental impacts of the
10 proposed action and alternatives, and a listing of agencies and persons consulted.

11 (6) Complete all environmental review requirements necessary for the project's compliance with
12 applicable authorities cited in §50.4.

13 (7) Based on steps set forth in paragraph (1) through (6) of this section, make one of the following
14 findings:

15 (i) A Finding of No Significant Impact (FONSI), in which HUD determines that the project is not an
16 action that will result in a significant impact on the quality of the human environment. HUD may then
17 proceed with the project.

18 (ii) A finding of significant impact, in which the project is deemed to be an action which may
19 significantly affect the quality of the human environment. HUD must then proceed with its environmental
20 review under subpart F of this part.

21 [61 FR 50916, Sept. 27, 1996, as amended at 79 FR 49229, Aug. 20, 2014]

22 **§50.32 Responsibility for environmental processing.**

23 The program staff in the HUD office responsible for processing the project application or
24 recommending a policy action is responsible for conducting the compliance finding, EA, or EIS. The
25 collection of data and studies as part of the information contained in the environmental review may be
26 done by an applicant or the applicant's contractor. The HUD program staff may use any information
27 supplied by the applicant or contractor, provided HUD independently evaluates the information, will be
28 responsible for its accuracy, supplements the information, if necessary, to conform to the requirements of
29 this part, and prepares the environmental finding. Assessments for projects over 200 lots/dwelling units or
30 beds shall be sent to the ~~Field Environmental Clearance Officer (FECO)~~FEO or REO or, in the absence of
31 a ~~FECO~~FEO or REO, to the ~~Program Environmental Clearance Officer-PECO~~ in Headquarters for review
32 and comment.

33 **§50.33 Action resulting from the assessment.**

34 (a) A proposal may be accepted without modifications if the EA indicates that the proposal will not
35 significantly (see 40 CFR 1508.27) affect the quality of the human environment and a FONSI is prepared.

36 (b) A proposal may be accepted with modifications provided that:

37 (1) Changes have been made that would reduce adverse environmental impact to acceptable and
38 insignificant levels; and

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1 (2) An Environmental Management and Monitoring Program is developed in accordance with §50.22
2 when it is deemed necessary by the HUD approving official.

3 (c) A proposal should be rejected if significant and unavoidable adverse environmental impacts
4 would still exist after modifications have been made to the proposal and an EIS is not prepared.

5 (d) A proposal (if not rejected) shall require an EIS if the EA indicates that significant environmental
6 impacts would result.

7 **§50.34 Time delays for exceptional circumstances.**

8 (a) Under the circumstances described in this section, the FONSI must be made available for public
9 review for 30 calendar days before a final decision is made whether to prepare an EIS and before the
10 HUD action is taken. The circumstances are:

11 (1) When the proposed action is, or is closely similar to, one which normally requires the preparation
12 of an EIS pursuant to §50.42(b) but it is determined, as a result of an EA or in the course of preparation of
13 a draft EIS, that the proposed action will not have a significant impact on the human environment; or

14 (2) When the nature of the proposed action is without precedent and does not appear to require
15 more than an assessment.

16 (b) In such cases, the FONSI must be concurred in by the AS/CPD and the ~~Program Environmental~~
17 ~~Clearance Officer~~ PECO. Notice of the availability of the FONSI shall be given to the public in accordance
18 with paragraphs (a) through (d) of §50.23.

19 ~~§50.35 Use of prior environmental assessments.~~

20 ~~When other Federal, State, or local agencies have prepared an EA or other environmental analysis~~
21 ~~for a proposed HUD project, these documents should be requested and used to the extent possible. HUD~~
22 ~~must, however, conduct the environmental analysis and prepare the EA and be responsible for the~~
23 ~~required environmental finding.~~

24 ~~§50.36 Updating of environmental reviews.~~

25 ~~The environmental review must be re-evaluated and updated when the basis for the original~~
26 ~~environmental or compliance findings is affected by a major change requiring HUD approval in the nature,~~
27 ~~magnitude or extent of a project and the project is not yet complete. A change only in the amount of~~
28 ~~financing or mortgage insurance involved does not normally require the environmental review to be re-~~
29 ~~evaluated or updated.~~

30

Internal Deliberative Draft

1 **Part 58**

2 **Subpart F—Environmental Impact Statements**

3 **§50.41 EIS policy.**

4 EIS's will be prepared and considered in program determinations pursuant to the general
5 environmental policy stated in §50.3 and 40 CFR 1505.2 (b) and (c).

6 **§50.42 Cases when an EIS is required.**

7 (a) An EIS is required if the proposal is determined to have a significant impact on the human
8 environment pursuant to subpart E.

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

10 (1) Would provide a site or sites for hospitals or nursing homes containing a total of 2,500 or more
11 beds; or

12 (2) Would remove, demolish, convert, or substantially rehabilitate 2,500 or more existing housing
13 units (but not including rehabilitation projects categorically excluded under §50.20), or which would result
14 in the construction or installation of 2,500 or more housing units, or which would provide sites for 2,500 or
15 more housing units.

16 (c) When the environmental concerns of one or more Federal authorities cited in §50.4 will be
17 affected by the proposal, the cumulative impact of all such effects should be assessed to determine
18 whether an EIS is required. Where all of the affected authorities provide alternative procedures for
19 resolution, those procedures should be used in lieu of an EIS.

20 **§50.43 Emergencies.**

21 In cases of national emergency and disasters or cases of imminent threat to health and safety or
22 other emergency which require the taking of an action with significant environmental impact, the
23 provisions of 40 CFR 1506.11 and of any applicable §50.4 authorities which provide for emergencies
24 shall apply.

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

26 **§58.1 Purpose and applicability.**

27 (a) *Purpose.* This part provides instructions and guidance to recipients of HUD assistance and other
28 responsible entities for conducting an environmental review for a particular project or activity and for
29 obtaining approval of a Request for Release of Funds.

30 (b) *Applicability.* This part applies to activities and projects where specific statutory authority exists
31 for recipients or other responsible entities to assume environmental responsibilities. Programs and
32 activities subject to this part include:

33 (1) Community Development Block Grant programs authorized by Title I of the Housing and
34 Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));

Internal Deliberative Draft

1 (2) [Reserved]

2 (3)(i) Grants to states and units of general local government under the Emergency ~~Shelter Solutions~~
3 Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing
4 Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with
5 Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care
6 Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing
7 Assistance, authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with
8 section 443 (42 U.S.C. 11402) ~~the Homeless Emergency Assistance and Rapid Transition to Housing Act~~
9 ~~of 2009 (HEARTH Act)~~ [citation needed];

10 (ii) Grants ~~beginning with Fiscal Year 2001~~ to private non-profit organizations and housing agencies
11 under the ~~Continuum of Care Program Supportive Housing Program and Shelter Plus Care Program~~
12 authorized by ~~Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443~~
13 ~~(42 U.S.C. 11402)~~ ~~the HEARTH Act~~ [citation needed];

14 (4) The HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez
15 National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);

16 (5) Grants to States and units of general local government for abatement of lead-based paint and
17 lead dust hazards pursuant to Title II of the Departments of Veterans Affairs and Housing and Urban
18 Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint
19 hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in
20 accordance with section 1011(o) (42 U.S.C. 4852(o));

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

24 (ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for Fiscal Year 1999
25 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban
26 Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October
27 21, 1998); and

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

31 (7) Special Projects ~~appropriated authorized~~ under an appropriation act for HUD, such as special
32 projects under the heading "Annual Contributions for Assisted Housing" in Title II of various Departments
33 of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations
34 Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of
35 1994 (42 U.S.C. 3547);

36 (8) The FHA Multifamily Housing Finance Agency ~~Pilot~~ Program under section 542(c) of the Housing
37 and Community Development Act of 1992, in accordance with section 542(c)(9)(12 U.S.C. 1707 note);

38 (9) The Self-Help Homeownership Opportunity Program under section 11 of the Housing
39 Opportunity Program Extension Act of 1996 (Pub. L. 104-120, 110 Stat. 834), in accordance with section
40 11(m));

Internal Deliberative Draft

1 (10) Assistance provided under the Native American Housing Assistance and Self-Determination
2 Act of 1996 (NAHASDA), in accordance with:

3 (i) Section 105 for Indian Housing Block Grants and Federal Guarantees or Financing for Tribal
4 Housing Authorities (25 U.S.C. 4115 and 4226); and

5 (ii) Section 806 for Native Hawaiian Housing Block Grants (25 U.S.C. 4226);

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

8 (12) Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing
9 Opportunity Act, as follows: competitive grants beginning with Fiscal Year 2001 and all formula grants, in
10 accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for Fiscal Year 1999 and prior years, in
11 accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban
12 Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October
13 21, 1998).

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

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

26 [61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56127, Sept. 29, 2003]



28 **§58.2 Terms, abbreviations and definitions.**

29 (a) For the purposes of this part, the following definitions supplement the uniform terminology
30 provided in 40 CFR part 1508:

31 (1) *Activity* means an action that a grantee or recipient puts forth as part of an assisted project,
32 regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the
33 HUD assistance program.

34 (2) *Certifying Officer* means the official who is authorized to execute the Request for Release of
35 Funds and Certification and has the legal capacity to carry out the responsibilities of §58.13. The
36 Certifying Officer is the chief elected officer of the Unit of General Local Government. This role may be
37 delegated to another officer of the responsible entity by a formal written delegation from the Certifying
38 Officer. Any delegations should be kept on file at the responsible entity and provided to HUD. In all cases,
39 the Certifying Officer must be someone who represents the responsible entity and agrees to be subject to
40 the jurisdiction of the federal courts in accordance with section 58.13.

Internal Deliberative Draft

1 (3) Choice limiting action means an action that may have an adverse impact on the environment or
2 limit the choice of reasonable alternatives. A choice limiting action may include, but is not limited to, real
3 property acquisition, demolition, disposition, rehabilitation, repair, new construction, site preparation or
4 clearance, lead abatement, asbestos abatement, ground disturbance, and leasing. Activities listed in
5 section 58.35(b) of this part and site studies and assessments that will not have an environmental impact,
6 including Phase I and Phase II Environmental Site Assessments, minimal associated soil boring, and
7 wetlands delineations, are not choice limiting actions.

8 ~~(3) Extraordinary Circumstances means a situation in which an environmental assessment (EA) or~~
9 ~~environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or~~
10 ~~EIS is appropriate. Indicators of unusual conditions are:~~

11 ~~(i) Actions that are unique or without precedent;~~

12 ~~(ii) Actions that are substantially similar to those that normally require an EIS;~~

13 ~~(iii) Actions that are likely to alter existing HUD policy or HUD mandates; or~~

14 ~~(iv) Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential~~
15 ~~for a significant impact on the environment or in which the environment could have a significant impact on~~
16 ~~users of the facility.~~

17 (XX) Disaster means a Presidentially declared disaster or a local emergency that has been declared
18 by the chief elected official of the responsible entity.

19 Multifamily means residential construction with five or more units.

20 (4) *Project* means an activity, or a group of integrally related activities, designed by the recipient to
21 accomplish, in whole or in part, a specific objective.

22 (5) *Recipient* means any of the following entities, when they are eligible recipients or grantees under
23 a program listed in §58.1(b):

24 (i) A State that does not distribute HUD assistance under the program to a unit of general local
25 government;

26 (ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;

27 (iii) A unit of general local government;

28 (iv) An Indian tribe;

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

31 (vi) Any direct grantee of HUD for a special project under §58.1(b)(7);

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

Internal Deliberative Draft

1 (viii) With respect to the Self-Help Homeownership Opportunity Program under §58.1(b)(9), any
2 direct grantee of HUD.

3 (ix)(A) With respect to NAHASDA assistance under §58.1(b)(10), the Indian tribe or the Department
4 of Hawaiian Home Lands; and

5 (B) With respect to the Section 184 Indian Housing Loan Guarantee program under §58.1(b)(11),
6 the Indian tribe.

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

9 (6) *Release of funds.* In the case of the FHA Multifamily Housing Finance Agency Program under
10 §58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and
11 Request for Release of Funds refers to a recipient's request for a firm approval letter. In the case of the
12 Section 184 Indian Housing Loan Guarantee program under §58.1(b)(11), Release of Funds refers to
13 HUD's issuance of a commitment to guarantee a loan, or if there is no commitment, HUD's issuance of a
14 certificate of guarantee.

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

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

18 (ii) With respect to environmental responsibilities under the programs listed in §58.1(b)(3)(ii) and (6)
19 through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the
20 Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native
21 American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) listed in
22 §58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing
23 Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the
24 responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in §58.1(b)(11).
25 Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible
26 entities are designated as follows:

27 (A) For qualified housing finance agencies, the State or a unit of general local government, Indian
28 tribe or Alaska native village whose jurisdiction contains the project site;

29 (B) For public housing agencies, the unit of general local government within which the project is
30 located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD
31 determines this infeasible, the State;

32 (C) For non-profit organizations and other entities, the unit of general local government, Indian tribe
33 or Alaska native village within which the project is located that exercises land use responsibility, or if HUD
34 determines this infeasible, the county, or if HUD determines this infeasible, the State;

35 Single family means residential construction with one to four units.

36 ~~_(8) Unit Density refers to a change in the number of dwelling units. Where a threshold is identified~~
37 ~~as a percentage change in density that triggers review requirements, no distinction is made between an~~
38 ~~increase or a decrease in density.~~

Internal Deliberative Draft

1 (9) *Tiering* means the evaluation of an action or an activity at various points in the development
2 process as a proposal or event becomes ripe for an Environment Assessment or Review.

3 ~~(10) *Vacant Building* means a habitable structure that has been vacant for more than one year.~~

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

5 (1) CDBG—Community Development Block Grant;

6 (2) CEQ—Council on Environmental Quality;

7 ~~(XX) DECO—Departmental Environmental Clearance Officer~~

8 (3) EA—Environmental Assessment;

9 (4) EIS—Environmental Impact Statement;

10 (5) EPA—Environmental Protection Agency;

11 (6) ERR—Environmental Review Record;

12 (7) FONSI—Finding of No Significant Impact;

13 (8) HUD—Department of Housing and Urban Development;

14 (9) NAHA—Cranston-Gonzalez National Affordable Housing Act of 1990;

15 (10) NEPA—National Environmental Policy Act of 1969, as amended;

16 (11) NOI/EIS—Notice of Intent to Prepare an EIS;

17 (12) NOI/RROF—Notice of Intent to Request Release of Funds;

18 ~~(13) ROD—Record of Decision;~~

19 (14) ROF—Release of Funds; and

20 (15) RROF—Request for Release of Funds.

21
22 [61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003]

23 **§58.4 Assumption authority.**

24 (a) *Assumption authority for responsible entities: General.* Responsible entities shall assume the
25 responsibility for environmental review, decision-making, and action that would otherwise apply to HUD
26 under NEPA and other provisions of law that further the purposes of NEPA, as specified in §58.5.
27 Responsible entities that receive assistance directly from HUD assume these responsibilities by execution
28 of a grant agreement with HUD and/or a legally binding document such as the certification contained on

Internal Deliberative Draft

1 HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a State
2 distributes funds to a responsible entity, the State must provide for appropriate procedures by which
3 these responsible entities will evidence their assumption of environmental responsibilities.

4 (b) *Particular responsibilities of the States.* (1) States are recipients for purposes of directly
5 undertaking a State project and must assume the environmental review responsibilities for the State's
6 activities and those of any non-governmental entity that may participate in the project. In this case, the
7 State must submit the certification and RROF to HUD for approval.

8 (2) States must exercise HUD's responsibilities in accordance with §58.18, with respect to approval
9 of a unit of local government's environmental certification and RROF for a HUD assisted project funded
10 through the state. Approval by the state of a unit of local government's certification and RROF satisfies
11 the Secretary's responsibilities under NEPA and the related laws cited in §58.5.

12 (c) *Particular responsibilities of Indian tribes.* An Indian tribe may, but is not required to, assume
13 responsibilities for environmental review, decision-making and action for programs authorized by the
14 Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (other
15 than title VIII) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-
16 13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these
17 Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the
18 requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they
19 are retained by HUD and the provisions of part 50 of this title apply.

20 [61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003]

21 **§58.5 Related Federal laws and authorities.**

22 In accordance with the provisions of law cited in §58.1(b), the responsible entity must assume
23 responsibilities for environmental review, decision-making and action that would apply to HUD under the
24 following specified laws and authorities. The responsible entity must certify that it has complied with the
25 requirements that would apply to HUD under these laws and authorities and must consider the criteria,
26 standards, policies and regulations of these laws and authorities.

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

29 (2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971
30 (36 FR 8921), 3 CFR 1971-1975 Comp., p. 559, particularly section 2(c).

31 (3) Federal historic preservation regulations as follows:

32 (i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants
33 (UDAG); and

34 (ii) 36 CFR part 801 with respect to UDAG.

35 (4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation
36 Act of 1974 (16 U.S.C. 469 *et seq.*), particularly section 3 (16 U.S.C. 469a-1).

37 (5) Findings of no potential to cause effects to historic properties. In accordance with Section 106 of
38 the National Historic Preservation Act [54 U.S.C. § 300101 *et seq.*] and its implementing regulations at 36

Internal Deliberative Draft

1 CFR 800.3(a)(1), HUD has determined that the following type of activities have no potential to cause
2 effects to historic properties and no further review under Section 106 is required.

3 (i) Rehabilitation or renovation of an existing building or property in residential use that was built
4 within the previous 45 years where all the following apply:

5 (a) The proposed project does not involve transfer, demolition, new construction, expansion of
6 the height or footprint of an existing building, or ground disturbance beyond maintenance;

7 (b) The project is otherwise categorically excluded from NEPA pursuant to 58.35(a); and

8 (c) No extraordinary circumstances as described in 58.35(c) apply.

9 (ii) Other activities as HUD designates through memorandum signed by the DECO.

10 (b) *Floodplain management and wetland protection.* (1) Executive Order 11988, Floodplain
11 Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD
12 regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship
13 between the decision-making process in 24 CFR part 55 and this part, see §55.10 of this subtitle A.)

14 (2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977
15 Comp., p. 121, as interpreted in HUD regulations at 24 CFR part 55, particularly sections 2 and 5 of the
16 order.

17 (c) *Coastal Zone Management.* The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et*
18 *seq.*), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

19 (d) *Sole source aquifers.* (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et*
20 *seq.*, and 21 U.S.C. 349) as amended; particularly section 1424(e)(42 U.S.C. 300h-3(e)).

21 (2) Sole Source Aquifers (Environmental Protection Agency—40 CFR part 149).

22 (e) *Endangered species.* The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as
23 amended, particularly section 7 (16 U.S.C. 1536).

24 (f) *Wild and scenic rivers.* The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) as
25 amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

26 (g) *Air quality.* (1) The Clean Air Act (42 U.S.C. 7401 *et. seq.*) as amended; particularly section
27 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

28 (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans
29 (Environmental Protection Agency—40 CFR parts 6, 51, and 93).

30 (h) *Farmlands protection.* (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*)
31 particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

32 (2) Farmland Protection Policy (Department of Agriculture—7 CFR part 658).

33 (i) *HUD environmental standards.* (1) Applicable criteria and standards specified in part 51 of this
34 title, other than the runway clear zone notification requirement in §51.303(a)(3).

Internal Deliberative Draft

1 (2)(i) Also, it is HUD policy that all properties that are being proposed for use in HUD programs be
2 free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances,
3 where a hazard could affect the health and safety of occupants or conflict with the intended utilization of
4 the property.

5 (ii) The environmental review of multifamily housing with five or more dwelling units (including
6 leasing), or non-residential property, must include the evaluation of previous uses of the site or other
7 evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not
8 adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.

9 (iii) Particular attention should be given to any proposed site on or in the general proximity of such
10 areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained,
11 hazardous wastes.

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

14 (j) *Environmental justice*. Executive Order 12898—Federal Actions to Address Environmental
15 Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR,
16 1994 Comp. p. 859.

17 [61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003; 78 FR 68734, Nov. 15, 2013]

18 §58.6 Other requirements.

19 In addition to the duties under the laws and authorities specified in §58.5 for assumption by the
20 responsible entity under the laws cited in §58.1(b), the responsible entity must comply with the following
21 requirements. Applicability of the following requirements does not trigger the certification and release of
22 funds procedure under this part or preclude exemption of an activity under §58.34(a)(12) and/or the
23 applicability of §58.35(b). However, the responsible entity remains responsible for addressing the
24 following requirements in its ERR and meeting these requirements, where applicable, regardless of
25 whether the activity is exempt under §58.34 or categorically excluded under §58.35(a) or (b).

26 (a)(1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), Federal
27 financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in
28 an area identified by the Federal Emergency Management Agency (FEMA) as having special flood
29 hazards, unless:

30 (i) The community in which the area is situated is participating in the National Flood Insurance
31 Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification
32 regarding such hazards; and

33 (ii) Where the community is participating in the National Flood Insurance Program, flood insurance
34 protection is to be obtained as a condition of the approval of financial assistance to the property owner.

35 (2) Where the community is participating in the National Flood Insurance Program and the recipient
36 provides financial assistance for acquisition or construction purposes (including rehabilitation) for property
37 located in an area identified by FEMA as having special flood hazards, the responsible entity is
38 responsible for assuring that flood insurance ~~under that meets the minimum requirements of~~ the National
39 Flood Insurance Program is obtained and maintained.

40 (3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

Internal Deliberative Draft

1 (4) Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law
2 for assistance to state-owned projects within states approved by the Federal Insurance Administrator
3 consistent with 44 CFR 75.11.

4 (b) Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD
5 disaster assistance that is made available in a special flood hazard area may not be used to make a
6 payment (including any loan assistance payment) to a person for repair, replacement or restoration for
7 flood damage to any personal, residential or commercial property if:

8 (1) The person had previously received Federal flood disaster assistance conditioned on obtaining
9 and maintaining flood insurance; and

10 (2) The person failed to obtain and maintain flood insurance.

11 (c) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement
12 Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the
13 Coastal Barrier Resources System.

14 (d) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an
15 existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the responsible
16 entity shall advise the buyer that the property is in a runway clear zone or clear zone, what the
17 implications of such a location are, and that there is a possibility that the property may, at a later date, be
18 acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this
19 information.

20 [61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998; 78 FR 68734, Nov. 15, 2013]

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

22 **§58.10 Basic environmental responsibility.**

23 In accordance with the provisions of law cited in §58.1(b), except as otherwise provided in §58.4(c),
24 the responsible entity must assume the environmental responsibilities for projects under programs cited in
25 §58.1(b) unless HUD has determined that an environmental review completed pursuant to the procedures
26 in 24 CFR part 50 eliminate the need for an environmental review under this part. In doing so, the
27 responsible entity must comply with the provisions of NEPA and the CEQ regulations contained in 40
28 CFR parts 1500 through 1508, including the requirements set forth in this part.

29 [68 FR 56128, Sept. 29, 2003]

30 **§58.11 Legal capacity and performance.**

31 (a) A responsible entity which believes that it does not have the legal capacity to carry out the
32 environmental responsibilities required by this part must contact the appropriate local HUD Office or the
33 State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

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

Internal Deliberative Draft

1 (c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review
2 in a particular case for one or more of the following reasons: on the basis of performance, timing or
3 compatibility of objectives, to avoid duplication, or in accordance with §58.77(d)(1).

4 (d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if
5 HUD determines that the responsible entity should not perform the environmental review, HUD may
6 designate another responsible entity to conduct the review in accordance with this part or may itself
7 conduct the environmental review in accordance with the provisions of 24 CFR part 50.

8 [61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56129, Sept. 29, 2003]

9 **§58.12 Technical and administrative capacity.**

10 The responsible entity must develop the technical and administrative capability necessary to comply
11 with 40 CFR parts 1500 through 1508 and the requirements of this part.

12 **§58.13 Responsibilities of the certifying officer.**

13 Under the terms of the certification required by §58.71, a responsible entity's certifying officer is the
14 “responsible Federal official” as that term is used in section 102 of NEPA and in statutory provisions cited
15 in §58.1(b). The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA
16 and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related
17 Federal authorities listed in §58.5. The Certifying Officer must also:

18 (a) Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The
19 Certifying Officer will not be represented by the Department of Justice in court; and

20 (b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal
21 projects that may have an impact on the recipient's program.

22 **§58.14 Interaction with State, Federal and non-Federal entities.**

23 A responsible entity shall consult with appropriate environmental agencies, State, Federal and non-
24 Federal entities and the public in the preparation of an EIS, EA or other environmental reviews
25 undertaken under the related laws and authorities cited in §58.5 and §58.6. The responsible entity must
26 also cooperate with other agencies to reduce duplication between NEPA and comparable environmental
27 review requirements of the State (see 40 CFR 1506.2 (b) and (c)). The responsible entity must prepare its
28 environmental reviews EAs and EISs so that they comply with the environmental review requirements of
29 both Federal and State laws unless otherwise specified or provided by law. State, Federal and local
30 agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint
31 EISs or joint environmental assessments (see 40 CFR 1501.5(b) and 1501.6). A single ~~EIS or~~
32 EA environmental review may be prepared and adopted by multiple users to the extent that the review
33 addresses the relevant environmental issues and there is a written agreement between the cooperating
34 agencies which sets forth the coordinated and overall responsibilities.

35 [63 FR 15271, Mar. 30, 1998]

36 **§58.15 Tiering.**

37 Responsible entities may tier their environmental reviews and assessments to eliminate repetitive
38 discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a
39 requirement to evaluate a policy or proposal in the early stages of development or when site-specific

Internal Deliberative Draft

1 analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a
2 later date. The site specific review need only reference or summarize the issues addressed in the broader
3 review. The broader review should identify and evaluate those issues ripe for decision and exclude those
4 issues not relevant to the policy, program or project under consideration. The broader review should also
5 establish the policy, standard or process to be followed in the site specific review. The Finding of No
6 Significant Impact (FONSI) with respect to the broader assessment environmental review record
7 completed at the broad level shall include a summary of the assessment and identify the significant
8 issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices
9 or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated
10 impacts or impacts not adequately addressed in the prior review. However, funds may not be committed
11 to a site until a site-specific review has been completed for that site. A tiering approach can be used for
12 meeting environmental review requirements in areas designated for special focus in local Consolidated
13 Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate
14 environmental reviews. Except in rare cases, broad-level tiered reviews should not be relied on for more
15 than 5 years and should not be reevaluated.

16 §58.17 [Reserved]

17 §58.18 Responsibilities of States assuming HUD environmental responsibilities.

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

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

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

24 (2) Receive public notices, RROFs, and certifications from recipients pursuant to §§58.70 and
25 58.71; accept objections from the public and from other agencies (§58.73); and perform other related
26 responsibilities regarding releases of funds.

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

29 [68 FR 56129, Sept. 29, 2003]

30 Subpart C—General Policy: Environmental Review Procedures

31 §58.21 Time periods.

32 All time periods in this part shall be counted in calendar days. The first day of a time period begins
33 at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice
34 which initiates the time period.

35 §58.22 Limitations on activities pending clearance.

36 (a) Neither a recipient nor any participant in the development process, including public or private
37 nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program
38 listed in §58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and
39 the related certification from the responsible entity. In addition, until the RROF and the related certification

Internal Deliberative Draft

1 have been approved, neither a recipient nor any participant in the development process may commit non-
2 HUD funds on or undertake an activity or project under a program listed in §58.1(b) if the activity or
3 project ~~would could~~ have an adverse environmental impact or represent a choice limiting action~~limit the~~
4 ~~choice of reasonable alternatives~~.

5 (b) If a project or activity ~~is exempt under §58.34, or~~ is categorically excluded (except in
6 extraordinary circumstances) under §58.35(b), no RROF is required and the recipient may undertake the
7 activity immediately after the responsible entity has documented its determination as required in
8 §58.34(b) and §58.35(d), but the recipient must comply with applicable requirements under §58.6.

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

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

20 (AA) A conditional contract for the acquisition of a proposed site or property is allowable prior to the
21 completion of the environmental review if the contract includes language that states that the purchaser
22 has no obligation to purchase the property and that no transfer of title to the purchaser may occur unless
23 and until the responsible entity has provided the purchaser and/or seller with a written notification that it
24 has completed an environmental review and its request for release of funds has been approved or that a
25 request for release of funds is not required. A conditional contract used under this section must be
26 revocable if the responsible entity finds any environmental issues or receives public comment that
27 persuades the responsible entity to cancel the project or project location. The contract must be revocable
28 even if the project otherwise meets the minimum requirements of this part. The responsible entity shall
29 make the purchaser and seller aware of any required mitigation measures or conditions to address issues
30 identified in the environmental review that must be satisfied before or after the purchase.

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

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

43
44 [68 FR 56129, Sept. 29, 2003]

Internal Deliberative Draft

1 **§58.23 Financial assistance for environmental review.**

2 The costs of environmental reviews, including costs incurred in complying with any of the related
3 laws and authorities cited in §58.5 and §58.6, are eligible costs to the extent allowable under the HUD
4 assistance program regulations.

5

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

8 **§58.30 Environmental review process.**

9 (a) The environmental review process consists of all the actions that a responsible entity must take
10 to determine compliance with this part. The environmental review process includes all the compliance
11 actions needed for other activities and projects that are not assisted by HUD but are aggregated by the
12 responsible entity in accordance with §58.32.

13 (b) The environmental review process should begin as soon as a recipient determines the projected
14 use of HUD assistance.

15 **§58.32 Project aggregation.**

16 (a) A responsible entity must group together and evaluate as a single project all individual activities
17 which are related either on a geographical or functional basis, or are logical parts of a composite of
18 contemplated actions.

19 (b) In deciding the most appropriate basis for aggregation when evaluating activities under more
20 than one program, the responsible entity may choose: *functional aggregation* when a specific type of
21 activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; *geographic*
22 *aggregation* when a mix of dissimilar but related activities is to be concentrated in a fairly specific project
23 area (e.g., a combination of water, sewer and street improvements and economic development activities);
24 or a *combination of aggregation approaches*, which, for various project locations, considers the impacts
25 arising from each functional activity and its interrelationship with other activities.

26 (c) The purpose of project aggregation is to group together related activities so that the responsible
27 entity can:

28 (1) Address adequately and analyze, in a single environmental review, the separate and combined
29 impacts of activities that are similar, connected and closely related, or that are dependent upon other
30 activities and actions. (See 40 CFR 1508.25(a)).

31 (2) Consider reasonable alternative courses of action.

32 (3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative
33 effects.

34 (4) Prescribe mitigation measures and safeguards including project alternatives and modifications to
35 individual activities.

Internal Deliberative Draft

1 (d) *Multi-year project aggregation*—(1) *Release of funds*. When a recipient's planning and program
2 development provide for activities to be implemented over two or more years, the responsible entity's
3 environmental review should consider the relationship among all component activities of the multi-year
4 project regardless of the source of funds and address and evaluate their cumulative environmental
5 effects. The estimated range of the aggregated activities and the estimated cost of the total project must
6 be listed and described by the responsible entity in the environmental review and included in the RROF.
7 The release of funds will cover the entire project period.

8 (2) When one or more of the conditions described in §58.~~AA47~~ exists, the recipient or other
9 responsible entity must re-evaluate the environmental review.

10 **§58.33 Emergencies.**

11 (a) In the cases of emergency, disaster or imminent threat to health and safety which warrant the
12 taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.

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

23 [61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56129, Sept. 29, 2003]

24 ~~§58.34 Exempt activities.~~

25 ~~(a) Except for the applicable requirements of §58.6, the responsible entity does not have to comply~~
26 ~~with the requirements of this part or undertake any environmental review, consultation or other action~~
27 ~~under NEPA and the other provisions of law or authorities cited in §58.5 for the activities exempt by this~~
28 ~~section or projects consisting solely of the following exempt activities:~~

29 ~~(1) Environmental and other studies, resource identification and the development of plans and~~
30 ~~strategies;~~

31 ~~(2) Information and financial services;~~

32 ~~(3) Administrative and management activities;~~

33 ~~(4) Public services that will not have a physical impact or result in any physical changes, including~~
34 ~~but not limited to services concerned with employment, crime prevention, child care, health, drug abuse,~~
35 ~~education, counseling, energy conservation and welfare or recreational needs;~~

36 ~~(5) Inspections and testing of properties for hazards or defects;~~

37 ~~(6) Purchase of insurance;~~

38 ~~(7) Purchase of tools;~~

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1 ~~(8) Engineering or design costs;~~

2 ~~(9) Technical assistance and training;~~

3 ~~(10) Assistance for temporary or permanent improvements that do not alter environmental~~
4 ~~conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest~~
5 ~~the effects from disasters or imminent threats to public safety including those resulting from physical~~
6 ~~deterioration;~~

7 ~~(11) Payment of principal and interest on loans made or obligations guaranteed by HUD;~~

8 ~~(12) Any of the categorical exclusions listed in §58.35(a) provided that there are no circumstances~~
9 ~~which require compliance with any other Federal laws and authorities cited in §58.5.~~

10 ~~(b) A recipient does not have to submit an RROF and certification, and no further approval from~~
11 ~~HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities~~
12 ~~and projects. However, the responsible entity must document in writing its determination that each activity~~
13 ~~or project is exempt and meets the conditions specified for such exemption under this section.~~

14 ~~[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998]~~

15 **§58.35 Categorical exclusions.**

16 Categorical exclusion refers to a category of activities for which no environmental impact statement
17 or environmental assessment and finding of no significant impact under NEPA is required, except in
18 extraordinary circumstances (see §58.35(c)2(a)(3)) in which a normally excluded activity may have a
19 significant impact. Compliance with the other applicable Federal environmental laws and authorities listed
20 in §§58.5 and 58.6 is required for any categorical exclusion listed in paragraph (a) of this section.

21 (a) *Categorical exclusions subject to §58.5.* The following activities are categorically excluded under
22 NEPA requirements for further review in an Environmental Assessment or an Environmental Impact
23 Statement, but may be subject to review under authorities listed in §58.5:

24 (1) Acquisition, repair, improvement, reconstruction, minor enhancement or rehabilitation of public
25 facilities and improvements (other than buildings) when the facilities and improvements are in place and
26 ~~will be retained in the same use without change in the~~ size or capacity ~~of will not change~~ more than 20
27 percent. Activities may include, but are not limited to, replacement of water or sewer lines, reconstruction
28 of curbs and sidewalks, repaving of streets, improvements (other than buildings) to park space, and
29 adding landscaping and design features to outdoor spaces. ~~(e.g., replacement of water or sewer lines,~~
30 ~~reconstruction of curbs and sidewalks, repaving of streets).~~

31 (2) Special projects directed to the removal of material and architectural barriers that restrict the
32 mobility of and accessibility to elderly and ~~handicapped~~ persons with disabilities.

33 (3) Rehabilitation of existing residential and nonresidential buildings and improvements when the
34 following conditions are met:

35 (i) The size or capacity of the building(s) or number of units are not changed more than 20 percent;
36 and

Internal Deliberative Draft

1 (ii) The project does not result in a change in land use, such as from non-residential to residential or
2 commercial to industrial.

3 ~~(i) In the case of a building for residential use (with one to four units), the density is not increased~~
4 ~~beyond four units, and the land use is not changed;~~

5 ~~(ii) In the case of multifamily residential buildings:~~

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

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

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

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

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

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

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

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

20 ~~(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for~~
21 ~~residential use (with one to four units) (see paragraph (a)(3)(i) of this section).~~

22 (CC) Single family residential new construction of up to 10 residential dwelling units where all of the
23 following conditions are met:

24 (i) The site is in a developed area and/or a previously developed site,

25 (ii) The structure and proposed use are compatible with existing, applicable Federal, tribal, state,
26 and local planning and zoning standards,

27 (iii) The proposed use will not substantially increase the number of motor vehicles at the site or in
28 the area,

29 (iv) The site and scale of construction are consistent with those of existing, adjacent, or nearby
30 buildings,

31 (v) The construction will not exceed existing support infrastructure capacities (roads, sewer, water,
32 parking, etc.), and

Internal Deliberative Draft

1 (vi) The number of dwelling units being constructed will not have a substantial impact on the density,
2 scale, or character of the surrounding area. In making this determination, the responsible entity shall
3 consider both the current proposed project and any other proposed construction actions contemplated by
4 the grantee, recipient, or responsible entity. In no case shall more than 10 units of new construction be
5 constructed under this categorical exclusion.

6 (DD) Demolition and removal of scattered non-historic single family residential structures and
7 disposal of debris therefrom in accordable with applicable regulations, including those regulations
8 applying to removal of asbestos containing materials, polychlorinated biphenyls, lead-based paint, and
9 other special hazard items. Structures are considered scattered if all structures aggregated in this project
10 and any related demolition actions contemplated by the applicant, recipient, or locality are sufficiently
11 disperse that they can be removed without substantially changing the character of the surrounding area.

12 (EE) Reconstruction of any structure or improvements following a disaster in a manner that
13 substantially conforms to the pre-disaster design, function, and location. Activities shall include mitigation
14 measures designed to make the reconstructed structure or improvements more resilient to future
15 damage.

16 (5) Acquisition, ~~(including leasing),~~ refinance, project-based vouchers, project-based rental
17 assistance, equity loans, ~~or~~ disposition, long-term contract renewal, or any change in ownership or control
18 of ~~of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land~~ property
19 provided that the ~~structure or land~~ property acquired, financed, or disposed of will be retained for the same
20 use.

21 (BB) Acquisition of properties and the associated demolition, removal, and/or relocation of structures
22 or utilities when the acquisition is from a willing seller, the buyer coordinated acquisition planning with
23 affected authorities, and the acquired property will be dedicated in perpetuity to uses that are compatible
24 with open space, recreational practices, or floodplain or wetland preservation.

25 (FF) Purchased or refinanced housing and medical facilities under section 223(f) of the National
26 Housing Act (12 U.S.C. 1715n) and section 184(?).

27 (GG) Mortgage prepayments or plans of action (including incentives) under 24 CFR part 248.

28 (YY) A proposed action to address a federally or locally declared recovery need, when the proposed
29 action fits within a categorical exclusion established by another federal agency where (i) the categorical
30 exclusion established by another federal agency being utilized is documented in the environmental review
31 record, (ii) the reliance on another federal agency's categorical exclusion is approved by both HUD and
32 the federal agency that originated the categorical exclusion, and (iii) the responsible entity confirms that
33 there are no extraordinary circumstances, as defined in this section or the other federal agency's
34 procedures, that would preclude the use of the categorical exclusion.

35 (6) Combinations of the above activities.

36 ~~(XX) Categorical exclusions not subject to Section 106 of the National Historic Preservation Act. In~~
37 ~~accordance with Section 106 of the National Historic Preservation Act [54 U.S.C. § 300101 et seq.] and~~
38 ~~its implementing regulations at 36 CFR 800.3(a)(1), HUD has determined that the following type of activity~~
39 ~~has no potential to cause effects to historic properties and no further review under Section 106 is~~
40 ~~required.~~

41 ~~(1) Rehabilitation or renovation of an existing building or property in residential use that was built~~
42 ~~within the previous 45 years where all the following apply:~~

Internal Deliberative Draft

1 ~~(i) The proposed project does not involve transfer, demolition, new construction, expansion of the~~
2 ~~height or footprint of an existing building, or ground disturbance beyond maintenance; and~~

3 ~~(ii) The project is otherwise categorically excluded from NEPA pursuant to 58.35(a).~~

4 ~~(b) Categorical exclusions not subject to §58.5.~~ The Department has determined that the following
5 categorically excluded activities would not alter any conditions that would require a review or compliance
6 determination under the Federal laws and authorities cited in §58.5. When the following kinds of activities
7 are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification,
8 and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances
9 described in paragraph (c) of this section. Following the award of the assistance, no further approval from
10 HUD or the State will be needed with respect to environmental requirements, except where paragraph (c)
11 of this section applies. The recipient remains responsible for carrying out any applicable requirements
12 under §58.6.

13 (1) Tenant-based rental assistance and tenant-based leasing;

14 (2) Supportive services including, but not limited to, health care, housing services, permanent
15 housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and
16 assistance in gaining access to local, State, and Federal government benefits and services;

17 (3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment,
18 supplies, staff training and recruitment and other incidental costs;

19 (4) Economic ~~development~~ activities without physical impacts, including but not limited to,
20 equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not
21 associated with construction, rehabilitation, or expansion of existing operations;

22 (5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under
23 construction (meaning the foundation is already in place at the time of the environmental review),
24 including closing costs and down payment assistance, interest buydowns, and similar activities that result
25 in the transfer of title.

26 (6) Affordable housing pre-development costs including legal, consulting, developer and other costs
27 related to obtaining site options, project financing, administrative costs and fees for loan commitments,
28 zoning approvals, and other related activities which do not have a physical impact.

29 ~~(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously~~
30 ~~approved under this part, if the approval is made by the same responsible entity that conducted the~~
31 ~~environmental review on the original project and re-evaluation of the environmental findings is not~~
32 ~~required under §58.47.~~

33 (AA) Environmental and other studies, resource identification and the development of plans and
34 strategies;

35 (BB) Information and financial services;

36 (CC) Administrative and management activities;

37 (DD) Public services that will not have a physical impact or result in any physical changes, including
38 but not limited to services concerned with employment, crime prevention, child care, health, drug abuse,
39 education, counseling, energy conservation, and welfare or recreational needs;

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1 (EE) Inspections and testing of properties for hazards or defects, or archaeological surveys for
2 cultural resources;

3 (FF) Purchase of insurance;

4 (GG) Purchase of tools;

5 (HH) Engineering or design costs;

6 (II) Technical assistance and training;

7 (JJ) Assistance for temporary or permanent improvements that do not alter environmental conditions
8 and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects
9 from disasters or imminent threats to public safety including those resulting from physical deterioration;

10 (KK) Payment of principal and interest on loans made or obligations guaranteed by HUD;

11 (LL) Any of the categorical exclusions listed in §58.35(a) provided that there are no circumstances
12 which require compliance with any other Federal laws and authorities cited in §58.5.

13 -(c) *Extraordinary Circumstances requiring NEPA review.* If a responsible entity determines that an
14 activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances
15 and conditions at or affecting the location of the activity or project, may have a significant environmental
16 effect, it shall ~~comply with all the requirements of this part.~~ prepare an EA in accordance with subpart E. If
17 it is evident without preparing an EA that an EIS is required pursuant to §58.37, HUD should proceed
18 directly to the preparation of an EIS in accordance with subpart G. Extraordinary circumstances include,
19 but are not limited to:

20 (1) Impacts that are potentially adverse, significant, uncertain, or that involve unique or unknown
21 risks, including but not limited to impacts to property (including sites, buildings, structures, and objects) of
22 historic, archaeological, or architectural significance; floodplains; wetlands; endangered species; park,
23 recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or
24 principal drinking water aquifers; prime farmlands; national monuments; migratory birds; and other
25 ecologically significant or critical areas.

26 (2) Proposed actions where the location could have a potentially adverse, significant, or uncertain
27 impacts, or that involve unique or unknown risks to residents and occupants of the project, including but
28 not limited to new residential construction in floodplains or sites where hazardous materials,
29 contamination, toxic chemicals and gases, or radioactive substances could affect the health and safety of
30 occupants or conflict with the intended utilization of the property.

31 (3) Proposed actions that do not comply with section 58.22, Limitations on activities pending
32 clearance, or that that have at any time violated any existing Federal, State, or local government
33 environmental or cultural law, policy, or requirements.

34 (4) Proposed actions that have a direct relationship to other actions with individually insignificant but
35 cumulatively significant environmental effects. For example, a single demolition may be categorically
36 excluded pursuant to subsection 50.20(a)(DD), but the same projects would require an EA due to
37 extraordinary circumstances if it contributes towards a program or pattern of demolition actions that
38 cumulatively have a significant impact on the character of the area.

39 (5) Proposed actions that are substantially similar to those that normally require an EIS.

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1 (d) The Environmental Review Record (ERR) must contain a well organized written record of the
2 process and determinations made under this section.

3 [61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998; 68 FR 56129, Sept. 29, 2003; 78 FR
4 68734, Nov. 15, 2013]

5 **§58.36 Environmental assessments.**

6 If a project is not ~~exempt or~~ categorically excluded under ~~§§58.34 and~~ 58.35, the responsible entity
7 must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that
8 an EIS is required under §58.37, the responsible entity should proceed directly to an EIS.

9 **§58.37 Environmental impact statement determinations.**

10 (a) An EIS is required when the project is determined to have a potentially significant impact on the
11 human environment.

12 (b) An EIS is required under any of the following circumstances, except as provided in paragraph (c)
13 of this section:

14 (1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing
15 homes containing a total of 2,500 or more beds.

16 (2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing
17 housing units (but not including rehabilitation projects categorically excluded under §58.35), or would
18 result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or
19 more housing units.

20 (3) The project would provide enough additional water and sewer capacity to support 2,500 or more
21 additional housing units. The project does not have to be specifically intended for residential use nor does
22 it have to be totally new construction. If the project is designed to provide upgraded service to existing
23 development as well as to serve new development, only that portion of the increased capacity which is
24 intended to serve new development should be counted.

25 (c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of
26 this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40
27 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days
28 before the responsible entity makes the final determination whether to prepare an EIS.

29 (d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where §58.53
30 is applicable.

31 (e) *Recommended EIS Format.* The responsible entity must use the EIS format recommended by
32 the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there
33 is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum
34 requirements prescribed in 40 CFR 1502.10.

35 **§58.38 Environmental review record.**

36 The responsible entity must maintain a written record of the environmental review undertaken under
37 this part for each project. This document will be designated the "Environmental Review Record" (ERR)
38 and shall be available for public review. The Departmental Environmental Clearance Officer (DECO) shall

Internal Deliberative Draft

1 establish a prescribed format that the responsible entity shall use to prepare the ERR. The DECO may
2 prescribe alternative formats as necessary to meet specific program needs.

3 (a) *ERR Documents*. The ERR shall contain all the environmental review documents, public notices
4 and written determinations or environmental findings required by this part as evidence of review,
5 decisionmaking and actions pertaining to a particular project of a recipient. The document shall:

6 (1) Describe the project and the activities that the recipient has determined to be part of the project;

7 (2) Evaluate the effects of the project or the activities on the human environment;

8 (3) Document compliance with applicable statutes and authorities, in particular those cited in §58.5
9 and 58.6; and

10 (4) Record the written determinations and other review findings required by this part (e.g., ~~exempt~~
11 ~~and~~ categorically excluded projects determinations, findings of no significant impact).

12 (b) *Other documents and information*. The ERR shall also contain verifiable source documents and
13 relevant base data used or cited in EAs, EISs or other project review documents. These documents may
14 be incorporated by reference into the ERR provided that each source document is identified and available
15 for inspection by interested parties. Proprietary material and special studies prepared for the recipient that
16 are not otherwise generally available for public review shall not be incorporated by reference but shall be
17 included in the ERR.

18 §58.AA Updating completed environmental reviews.

19 (a) ERRs are living documents, and responsible entities shall continue to update them as appropriate.
20 After the environmental review is complete,

21 (1) The responsible entity shall continue to update environmental review records to document
22 completion of any required mitigation measures.

23 (2) The responsible entity may find that circumstances change, either in the environmental
24 conditions; anticipated impacts; or the plans, designs, or financial arrangements for the project.
25 When changes occur, the responsible entity shall follow the procedures below to determine the
26 appropriate steps.

27 (b) Supplemental Assistance. If additional financial assistance is added to a project and there have been
28 no changes to the scope or scale of the proposal, reevaluation is generally not required. Responsible
29 entities shall update the existing ERR to reflect the supplemental assistance.

30 (1) If the supplemental assistance comes from a HUD program not contemplated by the original
31 review, the update shall document compliance with any additional environmental requirements
32 imposed by the program.

33 (2) If the supplemental assistance comes from a HUD program that requires a different
34 responsible entity under §58.2(b)(7) or would normally be subject to environmental policy and
35 procedures of 24 CFR part 50, the responsible entity shall provide the new responsible entity or
36 HUD with the full ERR to facilitate their adoption of the review pursuant to 50.BB or 58.BB.

Internal Deliberative Draft

1 (c) *Reevaluation.* Responsible entities shall reevaluate the environmental review record when there is a
2 change to the nature, magnitude, or extent of a project or a change in environmental conditions or
3 anticipated impacts, and the project is not yet complete.

4 (1) If the reevaluation confirms that all original findings are still valid, the responsible entity shall
5 update the environmental review record accordingly and ensure that any additional mitigation
6 measures are made binding on the project. The update shall include a document summarizing all
7 changes made to the environmental review record. No additional notices or approvals are required.

8 (2) If the reevaluation results in change in the level of review or non-compliance with any of the
9 related laws or authorities, the original environmental review is invalid. The responsible entity shall
10 prepare a new environmental review, including all notices and approvals, or the proposal must be
11 denied HUD assistance.

12 (d) Recipients shall promptly inform the responsible entity of any proposed supplemental assistance,
13 proposed changes, new circumstances, or changes in environmental conditions or anticipated impacts
14 that may require updating the environmental review. To the extent practicable, they shall stop work and
15 wait for confirmation from the responsible entity that it has complied with this section before proceeding
16 with the project.

17 (e) In some cases, an existing environmental review can no longer be relied on or reevaluated, because
18 the changes are too large in scope or the environmental review record has expired. Situations where a
19 new environmental review record is required include but are not limited to: relocating the proposal to a
20 location not considered in the original environmental review; changes that would substantially increase
21 the proposal's scale or impacts; and when an environmental review record is more than 5 years old.

22 **§58.BB Adoption.**

23 When other Federal, State, or local agencies have prepared an environmental review for a proposed
24 HUD project, environmental review documents should be requested and used to the extent possible.
25

26 (a) Responsible entities may adopt environmental reviews prepared by other responsible entities
27 pursuant to part 58 or another federal agency if the proposed projects and site conditions addressed in
28 the environmental documents are substantially the same, provided that the responsible entity:
29

- 30 (1) Independently reviews the environmental review;
31 (2) determines that the original project scope and project description applies to the current proposal;
32 (3) finds that the environmental review complies with all environmental review regulations and
33 applicable program environmental requirements; and
34 (4) maintains a record of all environmental compliance and findings.
35
36

37 (b) When a responsible entity adopts an environmental review, the ERR shall consist of a documentation
38 of the adoption certified by the certifying officer. As necessary, the responsible entity shall augment the
39 adopted review to be consistent with this part, 24 CFR parts 51 and 55, and other program requirements.
40 The responsible entity shall cite the original environmental review, adopt any special conditions and
41 environmental mitigation required for the project, and ensure these requirements are conveyed into
42 project documents and agreements. The responsible entity shall inform the agency that prepared the
43 original review of the adoption and any new mitigation measures or conditions on the project. If the
44 responsible entity or agency that completed the original review already provided public notice, it is not
45 necessary to provide public notice or submit a RROF.
46

47 (c) If the responsible entity determines that it is not possible to adopt the full ERR, it may adopt any
48 documents that it finds appropriate and incorporate them into a new ERR prepared following the

Internal Deliberative Draft

1 procedures in this part. The responsible entity shall independently review any relevant documents and
2 adopt only those documents that are less than 5 years old and relevant to the current proposal. The ERR
3 shall clearly indicate which documents were adopted.

5 **Subpart E—Environmental Review Process: Environmental** 6 **Assessments (EA's)**

7 **§58.40 Preparing the environmental assessment.**

8 The DECO shall establish a prescribed format that the responsible entity shall use to prepare the
9 EA. The DECO may prescribe alternative formats as necessary to meet specific program needs. In
10 preparing an EA for a particular proposed project or other action, the responsible entity must:

11 (a) Determine existing conditions and describe the character, features and resources of the project
12 area and its surroundings; identify the trends that are likely to continue in the absence of the project.

13 (b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions
14 that would change as a result of the project.

15 (c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the
16 human environment and whether the project will require further compliance under related laws and
17 authorities cited in §58.5 and §58.6.

18 (d) Examine and recommend feasible ways in which the project or external factors relating to the
19 project could be modified in order to eliminate or minimize adverse environmental impacts.

20 (e) Discuss the need for the proposal, appropriate alternatives where the proposal involves
21 unresolved conflicts concerning alternative uses of available resources, the environmental impacts of the
22 proposed action and alternatives, and a listing of agencies and persons consulted.

23 (f) Complete all environmental review requirements necessary for the project's compliance with
24 applicable authorities cited in §§58.5 and 58.6.

25 (g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following
26 findings:

27 (1) A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the
28 project is not an action that will result in a significant impact on the quality of the human environment. The
29 responsible entity may then proceed to §58.43.

30 (2) A finding of significant impact, in which the project is deemed to be an action which may
31 significantly affect the quality of the human environment. The responsible entity must then proceed with
32 its environmental review under subpart F or G of this part.

33 [61 FR 19122, Apr. 30, 1996, as amended at 79 FR 49229, Aug. 20, 2014]

34 **§58.43 Dissemination and/or publication of the findings of no significant impact.**

35 (a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice,
36 using the current HUD-recommended format or an equivalent format. As a minimum, the responsible

Internal Deliberative Draft

1 entity must send the FONSI notice to individuals and groups known to be interested in the activities, to
2 the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices
3 of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State
4 where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general
5 circulation in the affected community or on the jurisdiction's official government web site. If the notice is
6 not published, it must also be prominently displayed in public buildings, such as the local Post Office and
7 within the project area or in accordance with procedures established as part of the citizen participation
8 process.

9 (b) The responsible entity may disseminate or publish a FONSI notice at the same time it
10 disseminates or publishes the NOI/RROF required by §58.70. If the notices are released as a combined
11 notice, the combined notice shall:

12 (1) Clearly indicate that it is intended to meet two separate procedural requirements; and

13 (2) Advise the public to specify in their comments which "notice" their comments address.

14 (c) The responsible entity must consider the comments and make modifications, if appropriate, in
15 response to the comments, before it completes its environmental certification and before the recipient
16 submits its RROF. If funds will be used in Presidentially or locally declared disaster areas, modifications
17 resulting from public comment, if appropriate, must be made before proceeding with the expenditure of
18 funds.

19 §58.45 Public comment periods.

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

(a) Notice of Finding of No Significant Impact (FONSI)	15 days when published <u>in a newspaper or official government website</u> or, if no publication, 18 days when mailing and posting
(b) Notice of Intent to Request Release of Funds (NOI-RROF)	7 days when published <u>in a newspaper or official government website</u> or, if no publication, 10 days when mailing and posting
(c) Concurrent or combined notices	15 days when published <u>in a newspaper or official government website</u> or, if no publication, 18 days when mailing and posting

22 [68 FR 56130, Sept. 29, 2003]

23 §58.46 Time delays for exceptional circumstances.

24 The responsible entity must make the FONSI available for public comments for 30 days before the
25 recipient files the RROF when:

26 (a) There is a considerable interest or controversy concerning the project;

27 (b) The proposed project is similar to other projects that normally require the preparation of an EIS;
28 or

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Internal Deliberative Draft

1 (c) The project is unique and without precedent.

2 ~~§58.47—Re-evaluation of environmental assessments and other environmental findings.~~

3 ~~(a) A responsible entity must re-evaluate its environmental findings to determine if the original~~
4 ~~findings are still valid, when:~~

5 ~~(1) The recipient proposes substantial changes in the nature, magnitude or extent of the project,~~
6 ~~including adding new activities not anticipated in the original scope of the project;~~

7 ~~(2) There are new circumstances and environmental conditions which may affect the project or have~~
8 ~~a bearing on its impact, such as concealed or unexpected conditions discovered during the~~
9 ~~implementation of the project or activity which is proposed to be continued; or~~

10 ~~(3) The recipient proposes the selection of an alternative not in the original finding.~~

11 ~~(b)(1) If the original findings are still valid but the data or conditions upon which they were based~~
12 ~~have changed, the responsible entity must affirm the original findings and update its ERR by including this~~
13 ~~re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice~~
14 ~~has already been published, no further publication of a FONSI notice is required.~~

15 ~~(2) If the responsible entity determines that the original findings are no longer valid, it must prepare~~
16 ~~an EA or an EIS if its evaluation indicates potentially significant impacts.~~

17 ~~(3) Where the recipient is not the responsible entity, the recipient must inform the responsible entity~~
18 ~~promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances~~
19 ~~or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different~~
20 ~~alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-~~
21 ~~evaluate the findings before proceeding.~~

22 [61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

23 **Subpart F—Environmental Review Process: Environmental Impact**
24 **Statement Determinations**

25 ~~§58.52—Adoption of other agencies' EISs.~~

26 ~~The responsible entity may adopt a draft or final EIS prepared by another agency provided that the~~
27 ~~EIS was prepared in accordance with 40 CFR parts 1500 through 1508. If the responsible entity adopts~~
28 ~~an EIS prepared by another agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS~~
29 ~~may have to be revised and modified to adapt it to the particular environmental conditions and~~
30 ~~circumstances of the project if these are different from the project reviewed in the EIS. In such cases the~~
31 ~~responsible entity must prepare, circulate, and file a supplemental draft EIS in the manner prescribed in~~
32 ~~§58.60(d) and otherwise comply with the clearance and time requirements of the EIS process, except that~~
33 ~~scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS~~
34 ~~should be informed that the responsible entity intends to amend and adopt the EIS. The responsible entity~~
35 ~~may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The~~
36 ~~responsible entity is not required to re-circulate or file the EIS, but must complete the clearance process~~
37 ~~for the RROF. The decision to adopt an EIS shall be made a part of the project ERR.~~

38 **§58.53 Use of prior environmental impact statements.**

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1 Where any final EIS has been listed in the FEDERAL REGISTER for a project pursuant to this part, or
2 where an areawide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent
3 project requiring an environmental clearance, then no new EIS is required for the subsequent project if all
4 the following conditions are met:

5 (a) The ERR contains a decision based on a finding pursuant to §58.40 that the proposed project is
6 not a new major Federal action significantly affecting the quality of the human environment. The decision
7 shall include:

8 (1) References to the prior EIS and its evaluation of the environmental factors affecting the
9 proposed subsequent action subject to NEPA;

10 (2) An evaluation of any environmental factors which may not have been previously assessed, or
11 which may have significantly changed;

12 (3) An analysis showing that the proposed project is consistent with the location, use, and density
13 assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting
14 infrastructure assumptions in the prior EIS;

15 (4) Documentation showing that where the previous EIS called for mitigating measures or other
16 corrective action, these are completed to the extent reasonable given the current state of development.

17 (b) The prior final EIS has been filed within five (5) years, and updated as follows:

18 (1) The EIS has been updated to reflect any significant revisions made to the assumptions under
19 which the original EIS was prepared;

20 (2) The EIS has been updated to reflect new environmental issues and data or legislation and
21 implementing regulations which may have significant environmental impact on the project area covered
22 by the prior EIS.

23 (c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of
24 inadequacy of the prior EIS has been made.

25 **Subpart G—Environmental Review Process: Procedures for Draft, Final** 26 **and Supplemental Environmental Impact Statements**

27 Note: OEE intends to update the procedures below to reflect current procedural requirements for EISs.
28 These changes will be designed with the help of OGC.

29 **§58.55 Notice of intent to prepare an EIS.**

30 As soon as practicable after the responsible entity decides to prepare an EIS, it must publish a
31 NOI/EIS, using the HUD recommended format and disseminate it in the same manner as required by 40
32 CFR parts 1500 through 1508.

33 **§58.56 Scoping process.**

34 The determination on whether or not to hold a scoping meeting will depend on the same
35 circumstances and factors as for the holding of public hearings under §58.59. The responsible entity must
36 wait at least 15 days after disseminating or publishing the NOI/EIS before holding a scoping meeting.

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1 **§58.57 Lead agency designation.**

2 If there are several agencies ready to assume the lead role, the responsible entity must make its
3 decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are
4 unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable).
5 HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR
6 1501.5(e).

7 **§58.59 Public hearings and meetings.**

8 (a) *Factors to consider.* In determining whether or not to hold public hearings in accordance with 40
9 CFR 1506.6, the responsible entity must consider the following factors:

10 (1) The magnitude of the project in terms of economic costs, the geographic area involved, and the
11 uniqueness or size of commitment of resources involved.

12 (2) The degree of interest in or controversy concerning the project.

13 (3) The complexity of the issues and the likelihood that information will be presented at the hearing
14 which will be of assistance to the responsible entity.

15 (4) The extent to which public involvement has been achieved through other means.

16 (b) *Procedure.* All public hearings must be preceded by a notice of public hearing, which must be
17 published in the local news media 15 days before the hearing date. The Notice must:

18 (1) State the date, time, place, and purpose of the hearing or meeting.

19 (2) Describe the project, its estimated costs, and the project area.

20 (3) State that persons desiring to be heard on environmental issues will be afforded the opportunity
21 to be heard.

22 (4) State the responsible entity's name and address and the name and address of its Certifying
23 Officer.

24 (5) State what documents are available, where they can be obtained, and any charges that may
25 apply.

26 **§58.60 Preparation and filing of environmental impact statements.**

27 (a) The responsible entity must prepare the draft environmental impact statement (DEIS) and the
28 final environmental impact statements (FEIS) using the current HUD recommended format or its
29 equivalent.

30 (b) The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:

31 (1) Five copies to EPA Headquarters;

32 (2) Five copies to EPA Regional Office;

Internal Deliberative Draft

1 (3) Copies made available in the responsible entity's and the recipient's office;

2 (4) Copies or summaries made available to persons who request them; and

3 (5) FEIS only—one copy to State, HUD Field Office, and HUD Headquarters library.

4 (c) The responsible entity may request waivers from the time requirements specified for the draft
5 and final EIS as prescribed in 40 CFR 1506.6.

6 (d) When substantial changes are proposed in a project or when significant new circumstances or
7 information becomes available during an environmental review, the recipient may prepare a supplemental
8 EIS as prescribed in 40 CFR 1502.9.

9 (e) The responsible entity must prepare a Record of Decision (ROD) as prescribed in 40 CFR
10 1505.2.

11 [61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

12 **Subpart H—Release of Funds for Particular Projects**

13 **§58.70 Notice of intent to request release of funds.**

14 The NOI/RROF must be disseminated and/or published in the manner prescribed by §58.43 and
15 §58.45 before the certification is signed by the responsible entity.

16 **§58.71 Request for release of funds and certification.**

17 (a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if
18 applicable), except as provided in paragraph (b) of this section. This request shall be executed by the
19 Certifying Officer. The request shall describe the specific project and activities covered by the request and
20 contain the certification required under the applicable statute cited in §58.1(b). The RROF and
21 certification must be in a form specified by HUD.

22 (b) When the responsible entity is conducting an environmental review on behalf of a recipient, as
23 provided for in §58.10, the recipient must provide the responsible entity with all available project and
24 environmental information and refrain from undertaking any physical activities or choice limiting actions
25 until HUD (or the State, if applicable) has approved its request for release of funds. The certification form
26 executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the
27 assistance along with a description of any special environmental conditions that must be adhered to in
28 carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity
29 to HUD (or the State, if applicable) requesting the release of funds. The recipient must agree to abide by
30 the special conditions, procedures and requirements of the environmental review, and to advise the
31 responsible entity of any proposed change in the scope of the project or any change in environmental
32 conditions.

33 (c) If the responsible entity determines that some of the activities are exempt under applicable
34 provisions of this part, the responsible entity shall advise the recipient that it may commit funds for these
35 activities as soon as programmatic authorization is received. This finding shall be documented in the ERR
36 maintained by the responsible entity and in the recipient's project files.

37 **§58.72 HUD or State actions on RROFs and certifications.**

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1 The actions which HUD (or a State) may take with respect to a recipient's environmental certification
2 and RROF are as follows:

3 (a) In the absence of any receipt of objection to the contrary, except as provided in paragraph (b) of
4 this section, HUD (or the State) will assume the validity of the certification and RROF and will approve
5 these documents after expiration of the 15-day period prescribed by statute.

6 (b) HUD (or the state) may disapprove a certification and RROF if it has knowledge that the
7 responsible entity or other participants in the development process have not complied with the items in
8 §58.75, or that the RROF and certification are inaccurate.

9 (c) In cases in which HUD has approved a certification and RROF but subsequently learns (e.g.,
10 through monitoring) that the recipient violated §58.22 or the recipient or responsible entity otherwise failed
11 to comply with a clearly applicable environmental authority, HUD shall impose appropriate remedies and
12 sanctions in accord with the law and regulations for the program under which the violation was found.

13 [61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56130, Sept. 29, 2003]

14 **§58.73 Objections to release of funds.**

15 HUD (or the State) will not approve the ROF for any project before 15 calendar days have elapsed
16 from the time of receipt of the RROF and the certification or from the time specified in the notice
17 published pursuant to §58.70, whichever is later. Any person or agency may object to a recipient's RROF
18 and the related certification. However, the objections must meet the conditions and procedures set forth
19 in subpart H of this part. HUD (or the State) can refuse the RROF and certification on any grounds set
20 forth in §58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

21 **§58.74 Time for objecting.**

22 All objections must be received by HUD (or the State) within 15 days from the time HUD (or the
23 State) receives the recipient's RROF and the related certification, or within the time period specified in the
24 notice, whichever is later.

25 **§58.75 Permissible bases for objections.**

26 HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this
27 part based only on any of the following grounds:

28 (a) The certification was not in fact executed by the responsible entity's Certifying Officer.

29 (b) The responsible entity has failed to make one of the two findings pursuant to §58.40 or to make
30 the written determination required by §§58.35, 58.47-AA or 58.53 for the project, as applicable.

31 (c) The responsible entity has omitted one or more of the steps set forth at subpart E of this part for
32 the preparation, publication and completion of an EA.

33 (d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this
34 part for the conduct, preparation, publication and completion of an EIS.

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

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1 (f) Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that
2 the project is unsatisfactory from the standpoint of environmental quality.

3 [61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56130, Sept. 29, 2003]

4 **§58.76 Procedure for objections.**

5 A person or agency objecting to a responsible entity's RROF and certification shall submit objections
6 in writing to HUD (or the State). The objections shall:

7 (a) Include the name, address and telephone number of the person or agency submitting the
8 objection, and be signed by the person or authorized official of an agency.

9 (b) Be dated when signed.

10 (c) Describe the basis for objection and the facts or legal authority supporting the objection.

11 (d) State when a copy of the objection was mailed or delivered to the responsible entity's Certifying
12 Officer.

13 **§58.77 Effect of approval of certification.**

14 (a) *Responsibilities of HUD and States.* HUD's (or, where applicable, the State's) approval of the
15 certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related
16 provisions of law cited at §58.5 insofar as those responsibilities relate to the release of funds as
17 authorized by the applicable provisions of law cited in §58.1(b).

18 (b) *Public and agency redress.* Persons and agencies seeking redress in relation to environmental
19 reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It is
20 HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer.
21 Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to
22 environmental reviews covered by an approved certification to deal with the responsible entity, and not
23 the State, and may refer inquiries and complaints to the responsible entity and its Certifying Officer.
24 Remedies for noncompliance are set forth in program regulations.

25 (c) *Implementation of environmental review decisions.* Projects of a recipient will require post-review
26 monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using
27 procedures provided for in program regulations) to assure that decisions adopted through the
28 environmental review process are carried out during project development and implementation.

29 (d) *Responsibility for monitoring and training.* (1) At least once every three years, HUD intends to
30 conduct in-depth monitoring and exercise quality control (through training and consultation) over the
31 environmental activities performed by responsible entities under this part. Limited monitoring of these
32 environmental activities will be conducted during each program monitoring site visit. If through limited or
33 in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any
34 environmental deficiencies, HUD may take one or more of the following actions:

35 (i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring
36 at an earlier date or may schedule in-depth monitoring more frequently;

37 (ii) HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved
38 training, which will be provided periodically at various locations around the country;

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1 (iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;

2 (iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review
3 responsibility;

4 (v) HUD may initiate sanctions, corrective actions, or other remedies specified in program
5 regulations or agreements or contracts with the recipient.

6 (2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to
7 limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of
8 funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the
9 Certifying Officer remains the responsible Federal official under §58.13 with respect to projects and
10 activities for which the Certifying Officer has submitted a certification under this part.

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Internal Deliberative Draft

Part 51

24 CFR Part 51, Subpart B - Noise Abatement and Control

§ 51.104 Special requirements.

(a)(1) **Noise attenuation.** Noise attenuation measures are those required in addition to attenuation provided by buildings as commonly constructed in the area, and requiring open windows for ventilation. Measures that reduce external noise at a site shall be used wherever practicable in preference to the incorporation of additional noise attenuation in buildings. Building designs and construction techniques that provide more noise attenuation than typical construction may be employed also to meet the noise attenuation requirements.

(2) **Normally unacceptable noise zones and unacceptable noise zones.** Approvals in Normally Unacceptable Noise Zones require a minimum of 5 decibels additional sound attenuation for buildings having noise-sensitive uses if the day-night [average sound level](#) is greater than 65 decibels but does not exceed 70 decibels, or a minimum of 10 decibels of additional sound attenuation if the day-night [average sound level](#) is greater than 70 decibels but does not exceed 75 decibels. Noise attenuation measures in Unacceptable Noise Zones require the approval of the Assistant [Secretary](#) for Community Planning and Development, or the Certifying Officer for activities subject to [24 CFR part 58](#). (See § 51.104(b)(2).)

(b) **Environmental review requirements.** Environmental reviews shall be conducted pursuant to the requirements of [24 CFR parts 50 and 58](#), as applicable, or other environmental regulations issued by the [Department](#). These requirements are hereby modified for all projects proposed in the Normally Unacceptable and Unacceptable noise exposure zones as follows:

(1) **Normally unacceptable noise zone.**

(i) ~~All For~~ projects located in the Normally Unacceptable Noise Zone, ~~require a Special Environmental Clearance except~~ 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 in this noise zone.

(ii) When an EIS is required, the concurrence of the Program Assistant [Secretary](#) is also required before a project can be approved. For the purposes of this paragraph, an area will be considered as largely undeveloped unless the area within a 2-mile radius of the project boundary is more than 50 percent developed for urban uses and infrastructure (particularly water and sewers) is available and has capacity to serve the project.

~~(iii) All other projects in the Normally Unacceptable zone require a Special Environmental Clearance, except where an EIS is required for other reasons pursuant to HUD environmental policies.~~

(2) **Unacceptable noise zone.** ~~HUD has determined that a DNL of 75 decibels or higher would significantly impact the proposed project. The NEPA significance threshold for noise is 75 dB; therefore, a site exposure over 75 dB requires an Environmental Impact Statement.~~ An EIS is required prior to the approval of projects with unacceptable noise exposure. Projects [subject to 24 CFR part 50](#) in or partially in an Unacceptable Noise Zone shall be submitted to the [Program Assistant Secretary for Community Planning and Development](#), and the FEO or REO for review and comment. Projects [subject to 24 CFR part 58](#) in or partially in an Unacceptable Noise Zone shall be submitted to ~~or~~ the Certifying Officer ~~for activities subject to 24 CFR part 58, for approval.~~ ~~(3) Waivers.~~ The Program Assistant [Secretary](#) or the Certifying Officer may waive the EIS requirement in cases where noise is the only environmental issue ~~unmitigated prior to occupancy, and~~ no outdoor noise sensitive activity will take place on the site, ~~and, for projects subject to part 50, the FEO or REO has reviewed and commented on the environmental review record.~~ In such cases, an environmental review shall be made pursuant to the requirements of [24 CFR parts 50 or 58](#), as appropriate. ~~If the FEO or REO is not~~

Internal Deliberative Draft

1 [available to review in a timely manner, the environmental review record shall be sent to the Program](#)
2 [Environmental Clearance Officer in Headquarters for review and comment.](#)

3 [[44 FR 40861](#), July 12, 1979, as amended at [61 FR 13333](#), Mar. 26, 1996]

4 **Subpart C—Siting of HUD-Assisted Projects Near Hazardous Operations** 5 **Handling Conventional Fuels or Chemicals of an Explosive or** 6 **Flammable Nature**

7 **§ 51.201 Definitions.**

8 The terms *Department* and *Secretary* are defined in 24 CFR part 5.

9 *Acceptable separation distance (ASD)*—means the distance beyond which the explosion or combustion
10 of a hazard is not likely to cause structures or individuals to be subjected to blast overpressure or thermal
11 radiation flux levels in excess of the safety standards in § 51.203. The ASD is determined by applying the
12 safety standards established by this subpart C to the guidance set forth in HUD Guidebook, “Siting of
13 HUD-Assisted Projects Near Hazardous Facilities.”

14 *Blast overpressure*—means the pressure, in pounds per square inch, in excess of normal atmospheric
15 pressure on the surrounding medium caused by an explosion.

16 *Danger zone*—means the land area circumscribed by the radius which delineates the ASD of a given
17 hazard.

18 *Hazard*—means any stationary container which stores, handles or processes hazardous substances of
19 an explosive or fire prone nature. The term “hazard” does not include pipelines for the transmission of
20 hazardous substances, if such pipelines are located underground or comply with applicable Federal,
21 State and local safety standards. Also excepted are: (1) Containers with a capacity of 100 gallons or less
22 when they contain common liquid industrial fuels, such as gasoline, fuel oil, kerosene and crude oil since
23 they generally would pose no danger in terms of thermal radiation of blast overpressure to a project; and
24 (2) facilities which are shielded from a proposed HUD-assisted project by the topography, because these
25 topographic features effectively provide a mitigating measure already in place.

26 *Hazardous substances*—means petroleum products (petrochemicals) and chemicals that can produce
27 blast overpressure or thermal radiation levels in excess of the standards set forth in § 51.203. A specific
28 list of hazardous substance is found in appendix I to this subpart.

29 *HUD-assisted project*—the development, construction, rehabilitation, modernization or conversion with
30 HUD subsidy, grant assistance, loan, loan guarantee, or mortgage insurance, of any project which is
31 intended for residential, institutional, recreational, commercial or industrial use. For purposes of this
32 subpart the terms “rehabilitation” and “modernization” refer only to such repairs and renovation of a
33 building or buildings as will result in an increased number of people being exposed to hazardous
34 operations by increasing residential densities, converting the type of use of a building to habitation, or
35 making a vacant building habitable.

36 *Thermal radiation level*—means the emission and propagation of heat energy through space or a material
37 medium, expressed in BTU per square foot per hour (BTU/ft.² hr.).

38 [Vacant Building means a habitable structure that has been vacant for more than one year.](#)

39 **Subpart D - Siting of HUD Assisted Projects in Runway Protection Clear** 40 **Zones at Civil Airports and Clear-Runway Protection Zones and Accident** 41 **Potential Zones at Military Airfields**

Internal Deliberative Draft

1 § 51.300 Purpose.

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

6 § 51.301 Definitions.

7 For the purposes of this regulation, the following definitions apply:

8 (a) *Accident Potential Zone*. An area at military airfields which is beyond the ~~Clear-Runway Protection~~
9 Zone. The standards for the Accident Potential Zones are set out in Department of Defense Instruction
10 4165.57, "Air Installations Compatible Use Zones," November 8, 1977, 32 CFR part 256. There are no
11 Accident Potential Zones at civil airports.

12 (b) *Airport Operator*. The civilian or military agency, group or individual which exercises control over the
13 operations of the civil airport or military airfield.

14 (c) *Civil Airport*. An existing commercial service airport as designated in the National Plan of Integrated
15 Airport Systems prepared by the Federal Aviation Administration in accordance with section 504 of the
16 Airport and Airway Improvement Act of 1982.

17 (d) *Runway ~~Clear-Protection Zones and Clear Zones~~*. Areas immediately beyond the ends of a runway.
18 The standards for Runway ~~Clear-Protection~~ Zones for civil airports are established by FAA regulation 14
19 CFR part 152. The standards for ~~Clear-Runway Protection~~ Zones for military airfields are established by
20 DOD Instruction 4165.57, 32 CFR part 256.

21 § 51.302 Coverage.

22 (a) These policies apply to HUD programs which provide assistance, subsidy or insurance for
23 construction, land development, community development or redevelopment or any other provision of
24 facilities and services which are designed to make land available for construction. When the HUD
25 assistance, subsidy or insurance is used to make land available for construction rather than for the actual
26 construction, the provision of the HUD assistance, subsidy or insurance shall be dependent upon whether
27 the facility to be built is itself acceptable in accordance with the standards in § 51.303.

28 (b) These policies apply not only to new construction but also to substantial or major modernization
29 and rehabilitation and to any other program which significantly prolongs the physical or economic life of
30 existing facilities or which, in the case of Accident Potential Zones:

31 (1) Changes the use of the facility so that it becomes one which is no longer acceptable in
32 accordance with the standards contained in § 51.303(b);

33 (2) Significantly increases the density or number of people at the site; or

34 (3) Introduces explosive, flammable or toxic materials to the area.

35 (c) Except as noted in § 51.303(a)(3), these policies do not apply to HUD programs where the action
36 only involves the purchase, sale or rental of an existing property without significantly prolonging the
37 physical or economic life of the property.

38 (d) The policies do not apply to research or demonstration projects which do not result in new
39 construction or reconstruction, to interstate land sales registration, or to any action or emergency

Internal Deliberative Draft

1 assistance which is provided to save lives, protect property, protect public health and safety, or remove
2 debris and wreckage.

3 (e) These policies do not apply to any action or assistance funded under disaster appropriations that
4 are provided to save lives, protect property, protect public health and safety, remove debris, or actions
5 that have the effect of restoring facilities substantially as they existed prior to the disaster.

6 [49 FR 880, Jan. 6, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

7 **§ 51.303 General policy.**

8 It is HUD's general policy to apply standards to prevent incompatible development around civil airports
9 and military airfields.

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

11 (1) HUD policy is not to provide any assistance, subsidy or insurance for projects and actions covered by
12 this part except as stated in § 51.303(a)(2) below.

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

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

25 (b) HUD policy for actions in Accident Potential Zones at Military Airfields. HUD policy is to discourage the
26 provision of any assistance, subsidy or insurance for projects and actions in the Accident Potential Zones.
27 To be approved, projects must be generally consistent with the recommendations in the *Land Use*
28 *Compatibility Guidelines For Accident Potential Zones* chart contained in DOD Instruction 4165.57, 32
29 CFR part 256.

30 **§ 51.304 Responsibilities.**

31 (a) The following persons have the authority to approve actions in Accident Potential Zones:

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

34 (2) For all other HUD programs: the HUD approving official having approval authority for the project.

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

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

Internal Deliberative Draft

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

2 **§ 51.305 Implementation.**

3 (a) Projects already approved for assistance. This regulation does not apply to any project approved for
4 assistance prior to the effective date of the regulation whether the project was actually under construction
5 at that date or not.

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

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

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

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Internal Deliberative Draft

Part 55

Subpart C—Procedures for Making Determinations on Floodplain Management

§ 55.1 Purpose and basic responsibility.

(c) Except with respect to actions listed in §55.12(c), no HUD financial assistance (including mortgage insurance) may be approved ~~after May 23, 1994~~ with respect to:

(1) Any action other than a functionally dependent use or floodplain function restoration activity, located in a floodway;

(2) Any critical action located in a coastal high hazard area; or

(3) Any noncritical action located in a Coastal High Hazard Area, unless the action is a functionally dependent use, existing construction (including improvements), or reconstruction following destruction caused by a disaster. If the action is not a functionally dependent use, the action must be designed for location in a Coastal High Hazard Area. An action will be considered designed for a Coastal High Hazard Area if:

(i) In the case of reconstruction following destruction caused by a disaster or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

(ii) In the case of existing construction (including any minor improvements):

(A) The work met FEMA elevation and construction standards for a coastal high hazard area (or if such a zone or such standards were not designated, the 100-year floodplain) applicable at the time the original improvements were constructed; or

(B) If the original improvements were constructed before FEMA standards for the 100-year floodplain became effective or before FEMA designated the location of the action as within the 100-year floodplain, the work would meet at least the earliest FEMA standards for construction in the 100-year floodplain.

§ 55.20 Decision making process.

The decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives. The steps to be followed in the decision making process are:

(a) *Step 1.* Determine whether the proposed action is located in a 100-year floodplain (or a 500-year floodplain for a Critical Action). If the proposed action would not be conducted in one of those locations, then no further compliance with this part is required.

(b) *Step 2.* Notify the public at the earliest possible time of a proposal to consider an action in a floodplain (or in the 500-year floodplain for a Critical Action), and involve the affected and interested public in the decision making process.

(1) The public notices required by paragraphs (b) and (g) of this section may be combined with other project notices wherever appropriate. Notices required under this part must be bilingual if the affected

Internal Deliberative Draft

1 public is largely non-English speaking. In addition, all notices must be published in an appropriate local
2 printed news medium or on an official government web site, and must be sent to federal, state, and local
3 public agencies, organizations, and, where not otherwise covered, individuals known to be interested in
4 the proposed action.

5 (2) A minimum of 15 calendar days shall be allowed for comment on the public notice.

6 (3) A notice under this paragraph shall state: the name, proposed location and description of the activity;
7 the total number of acres of floodplain involved; and the HUD official and phone number to contact for
8 information. The notice shall indicate the hours and the HUD office at which a full description of the
9 proposed action may be reviewed.

10 (c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a floodplain (or
11 the 500-year floodplain for a Critical Action). (1) The consideration of practicable alternatives to the
12 proposed site or method may include: (i) Locations outside the floodplain (or 500-year floodplain for a
13 Critical Action); (ii) Alternative methods to serve the identical project objective; and (iii) A determination not
14 to approve any action. (2) In reviewing practicable alternatives, the Department or a grant recipient
15 subject to 24 CFR part 58 shall consider feasible technological alternatives, hazard reduction methods
16 and related mitigation costs, and environmental impacts.

17 (d) *Step 4.* Identify the potential direct and indirect impacts associated with the occupancy or modification
18 of the floodplain (or 500-year floodplain for a Critical Action).

19 (e) *Step 5.* Where practicable, design or modify the proposed action to minimize the potential adverse
20 impacts within the floodplain (including the 500-year floodplain for a Critical Action) and to restore and
21 preserve its natural and beneficial values. All critical actions in the 500-year floodplain shall be designed
22 and built at or above the 100-year floodplain (in the case of new construction) and modified to include:

23 (1) Preparation of and participation in an early warning system; (2) An emergency evacuation and
24 relocation plan ;(3) Identification of evacuation route(s) out of the 500-year floodplain; and (4)
25 Identification marks of past or estimated flood levels on all structures.

26 (f) *Step 6.* Reevaluate the proposed action to determine: (1) Whether it is still practicable in light of its
27 exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to
28 other floodplains, and its potential to disrupt floodplain values; and (2) Whether alternatives preliminarily
29 rejected at Step 3 (paragraph (c)) of this section are practicable in light of the information gained in Steps
30 4 and 5 (paragraphs (d) and (e)) of this section.

31 (g) *Step 7.* (1) If the reevaluation results in a determination that there is no practicable alternative to
32 locating the proposal in the floodplain (or the 500-year floodplain for a Critical Action), publish a final
33 notice that includes: (i) The reasons why the proposal must be located in the floodplain; (ii) A list of the
34 alternatives considered; and (iii) All mitigation measures to be taken to minimize adverse impacts and to
35 restore and preserve natural and beneficial values. (2) In addition, the public notice procedures of §
36 55.20(b)(1) shall be followed, and a minimum of 7 calendar days for public comment before approval of
37 the proposed action shall be provided.

38 (h) *Step 8.* Upon completion of the decision making process in Steps 1 through 7, implement the
39 proposed action. There is a continuing responsibility to ensure that the mitigating measures identified in
40 Step 7 are implemented.

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