

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 58

[Docket No. FR-4138-F-01]

RIN: 2501-AC32

### Technical Amendments to HUD's Regulations Governing Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

**SUMMARY:** On April 30, 1996 (61 FR 19120), HUD published a final rule streamlining and updating 24 CFR part 58 in its entirety. Part 58 provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting environmental reviews in accordance with: the National Environmental Policy Act of 1969 (NEPA); the NEPA implementing regulations of the Council on Environmental Quality; and other NEPA related Federal laws and authorities. This final rule makes several technical and clarifying amendments to the April 30, 1996 final rule.

**DATES:** *Effective Date:* April 29, 1998.

**FOR FURTHER INFORMATION CONTACT:** Richard H. Broun, Director, Office of Community Viability, Room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. For telephone communication, contact Fred Regetz, Environmental Review Division at (202) 708-1201, extension 4465. (This telephone number is not toll-free.) Hearing or speech-impaired individuals may access this telephone number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

#### I. The April 30, 1996 Final Rule

On April 30, 1996 (61 FR 19120), HUD published a final rule revising 24 CFR part 58 in its entirety. Part 58 provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting environmental reviews in accordance with: (1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) (NEPA); (2) the NEPA implementing regulations of the Council on Environmental Quality; and (3) other NEPA related Federal laws and authorities. The April 30, 1996 final rule streamlined, updated, and improved these regulations. With the exception of §§ 58.1(b)(6)(i) and 58.2(a)(5)(v)(A), the April 30, 1996 final rule became

effective on May 30, 1996. These two paragraphs, which pertain to public housing development and modernization programs, became effective on October 14, 1996. The April 30, 1996 final rule described in detail the amendments to 24 CFR part 58.

#### II. This Final Rule

This final rule makes several technical and clarifying changes to the April 30, 1996 final rule. These revisions are as follows:

1. This final rule revises the heading to § 58.1 so that it will more accurately reflect the subject matter of the section.

2. The final rule amends § 58.6 (Other requirements) by correcting a typographical error. Section 58.6 erroneously cites the requirements of § 58.34(a)(11). This rule corrects the error by properly citing § 58.34(a)(12). Sections 58.6(a)(1)(ii) and 58.6(a)(2) are revised to indicate that the requirement to purchase flood insurance in a special flood hazard area applies where a community is participating in the National Flood Insurance Program. While community participation and the purchase of flood insurance is a requirement generally, a community's participation in the flood insurance program is not a condition of Federal assistance during the first year after the Federal Emergency Management Agency notifies the community that it contains special flood hazard areas. During this limited period, HUD assistance may be approved for the properties in a special flood insurance area despite the community's initial nonparticipation in the program and the resulting unavailability of flood insurance. A new paragraph (b) is added to state explicitly the limitations on use of HUD disaster assistance that are imposed by section 582 of the National Flood Insurance Reform Act of 1994 when a person who had previously received Federal disaster assistance fails to obtain or maintain flood insurance.

3. The rule removes the last sentence of § 58.10, which redundantly states that the "provisions of the CEQ [Council on Environmental Quality] regulations in 40 CFR parts 1500 through 1508 are applicable to" part 58.

4. Section 58.14 currently permits State, Federal and local agencies to participate or act in a joint lead or cooperating agency capacity in preparing joint environmental impact statements. This final rule provides permissive authority to prepare joint environmental assessments.

5. Section 58.34(a)(10) is revised to clarify that the imminent threats that would trigger the exemption are imminent threats to public safety

including those resulting from physical deterioration.

6. Section 58.35(b)(5) is revised to replace an erroneous reference to new dwelling units with a reference to dwelling units under construction. New units not already under construction were never intended to be covered under this categorical exclusion.

7. Sections 58.47(a) and (b) have been revised for clarity. Section 58.47(b)(1) makes clear that, if the stated circumstances are met and a FONSI has already been published, then no further FONSI notice is required to be published.

8. The April 30, 1996 final rule removed several obsolete or unnecessarily codified sections from 24 CFR part 58. For example, several of these sections did not set forth any regulatory requirements, but were merely being held in reserve. The removal of these provisions, however, resulted in the discontinuous numbering of the sections comprising part 58. Since publication of the April 30, 1996 final rule, HUD has received several questions regarding the status of the missing sections. HUD wishes to clarify that 24 CFR part 58 (as amended by this final rule) describes *all* the regulatory requirements for entities assuming HUD environmental responsibilities.

#### III. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). In addition, part 10 permits publishing an interpretative rule for effect without prior public procedure.

HUD finds that in this case prior public procedure is unnecessary. In general, the amendments made by this final rule update and clarify the policies and procedures contained in the April 30, 1996 final rule. As noted above, § 58.14 has been revised to permit the same type of joint effort among Federal, State, and local agencies in preparing environmental assessments as currently exists in preparing environmental impact statements. Prior public comment is unnecessary for this change because it is clearly consistent with the underlying policy of the current section to further cooperation among these agencies and it is permissive authority.

The new § 58.6(b) is an interpretative rule which explains a limitation imposed by section 582 of the National Flood Insurance Reform Act of 1994 on the use of HUD disaster assistance in a special flood hazard area.

#### IV. Findings and Certifications

##### *Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

##### *Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule is concerned solely with the review procedures of entities assuming HUD environmental responsibilities. It effects no changes in the current relationships between the Federal government, the States and their political subdivisions.

##### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule makes several technical and clarifying changes to the April 30, 1996 final rule. This final rule will have no adverse or disproportionate economic impact on small entities.

##### *Unfunded Mandates Reform Act*

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

#### List of Subjects in 24 CFR Part 58

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

Accordingly, 24 CFR part 58 is amended as follows:

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

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

**Authority:** 12 U.S.C. 1707 *note*; 42 U.S.C. 1437o(i)(1) and (2), 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, and 12838; E.O. 11514, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

2. In § 58.1, revise the section heading to read as follows:

##### **§ 58.1 Purpose and applicability.**

\* \* \* \* \*

3. Amend § 58.6 as follows:

- a. In the introductory text, remove the term “§ 58.34(a)(11)” and add, in its place, the term “§ 58.34(a)(12)”;
- b. Revise paragraph (a)(1)(ii);
- c. Revise paragraph (a)(2);
- d. Redesignate paragraph (b) and (c) as paragraphs (c) and (d), respectively; and
- e. Add a new paragraph (b).

##### **§ 58.6 Other requirements.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

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

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

\* \* \* \* \*

(b) Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair,

replacement or restoration for flood damage to any personal, residential or commercial property if:

- (1) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and
- (2) The person failed to obtain and maintain the flood insurance.

\* \* \* \* \*

4. Revise § 58.10 to read as follows:

##### **§ 58.10 Basic environmental responsibility.**

In accordance with the provisions of law cited in § 58.1(b), the responsible entity must assume the environmental responsibilities for projects under programs cited in § 58.1(b), and in doing so must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part. This includes responsibility for compliance with the applicable provisions and requirements of the Federal laws and authorities specified in § 58.5.

5. Revise § 58.14 to read as follows:

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

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

6. Revise paragraph (a)(10) of § 58.34 to read as follows:

##### **§ 58.34 Exempt activities.**

(a) \* \* \*

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

\* \* \* \* \*

7. Revise paragraph (b)(5) of § 58.35 to read as follows:

**§ 58.35 Categorical exclusions.**

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

8. In § 58.47, revise the introductory text of paragraph (a) and paragraph (b) to read as follows:

**§ 58.47 Re-evaluation of environmental assessments and other environmental findings.**

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

\* \* \* \* \*

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

(2) If the responsible entity determines that the original findings are no longer valid, it must prepare an EA

or an EIS if its evaluation indicates potentially significant impacts.

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

**§ 58.60 [Amended]**

9. In § 58.60(e), remove the term "1502.2" and add, in its place, the term "1505.2".

Dated: March 13, 1998.

**Andrew M. Cuomo,**  
Secretary.

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