Environmental Review Training
Agenda

DAY ONE

9:00 – 9:30 **Welcome and Introductions**

- Trainer introductions
- Course objectives
- Manual contents

9:30 – 10:00 **Participant Introductions and Discussion**

- What types of projects are you implementing or planning to implement?
- What has been your experience (if any) with environmental review?
- What questions do you want to make sure you have answered by the end of this training?

10:00 – 10:30 **Environmental Review Basics: Overview and Regulatory Structure**

- Why—The Goals of Environmental Review.
- NEPA and related laws and authorities.
- Overview of Exemptions, Categorical Exclusions, Environmental Assessments, and Environmental Impact Statements.

10: 30 – 10:45 **BREAK**

10:45 – 12:00 **Environmental Review Basics: HUD's Process**

- Part 50 and PIH Notice 99-37.
- Part 58.
- Environmental Responsibility—Recipient and Responsible Entity.
- ONAP—who to get in touch with and how they can help.
- Exercise 1: Recipients and Responsible Entities.

12:00 – 1:00 LUNCH

1:00 – 1:30 **Environmental Review Basics: HUD's Process (continued)**

1:30 – 2:45 **Planning for Environmental Responsibility**

- How to staff environmental reviews and what to look for in an environmental consultant.

- The Importance of Keeping Good Records.
- Exercise 2: Staffing/Procuring for reviews.

2:45 – 3:00 **BREAK**

3:00 – 4:30 **Exempt Activities**

- What activities are covered?
- Procedures to follow and how to document.
- Day One Wrap-Up.

DAY TWO

9:00 – 10:30 **Aggregating Reviews**

- Geographic
- Functional
- Multi-year
- Exercise 3: Aggregating Reviews.

10:30 – 10:45 **BREAK**

10:45 – 12:00 **Categorical Exclusions**

- What activities are covered?
- Understanding § 58.5 and 58.6.
- Procedures to follow and how to document.
- The release of funds and notification process.
- Other review requirements that can arise.
- Exercise 4: Categorical Exclusions.

12:00 – 1:00 LUNCH

1:00 – 2:45 **Categorical Exclusions (Continued)**

2:45 – 3:00 **BREAK**

3:00 – 4:30 **Preparing an EA**

- What activities are covered?
- Procedures to follow and how to document.
- The release of funds and notification process.
- Special Procedures for Emergencies.

- Exercise 5: Reviewing an EA.
- Day Two Wrap-Up.

DAY THREE

9:00 – 10:30 **Preparing an EA (continued)**

10:30 – 10:45 **BREAK**

10:45—11:30 **Preparing an EA (continued)**

11:30 – 12:00 **Overview of Environmental Impact Statements**

12:00 – 1:00 LUNCH

1:00 – 2:45 **How to Use Forms for Exemptions, Categorical Exclusions, and EAs**

- Where do the forms fit in the process?
- How to prepare the forms.
- Who is responsible for the different forms?

2:45 – 3:00 **BREAK**

2:45 – 3:30 **Review of Important Requirements and Procedures**

- Exercise 6: What's the Appropriate Level of Review.
- Exercise 7: Preparing RROF and Public Notices for Submission to HUD.

3:30 – 4:30 **Wrap-up: Key Stumbling Points and Best Practices**

- Common pitfalls and how to avoid them.
- How different tribes in different circumstances effectively manage environmental review.
- Review of key questions.

I. Overview

Table of Contents: Section I Overview of the Guidebook

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I. Overview of the Guidebook

A. Using the Guidebook

Here is a sneak preview of the kinds of information you will find in this guidebook:

- User-friendly information about the entire environmental review process:
  - when an entity assumes HUD's environmental responsibilities under Part 58
  - when HUD performs environmental reviews under Part 50
- Informative details
- Checklists and tables to help manage the process
- Tips and reminders on the managing/oversight role

B. Who Should Use This Guidebook?

The primary users of this guidebook are the Indian tribes ("tribes" also includes Native Alaskan villages) and other Recipients of HUD funding—Tribally Designated Housing Entities (TDHEs). Office of Native American Program (ONAP) personnel who interact with these entities and provide advice throughout the environmental review process will also benefit from this guidebook.

C. Why Should I Use This Guidebook?

This guidebook provides Responsible Entities (RE) and non-RE Recipients with specific instructions and guidelines for carrying out their responsibilities under the environmental review process according to 24 CFR Part 58: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities. This regulation provides the guidelines for the roles and responsibilities of ONAP Area Office Administrators and staff authorized by Section 106(b)(2) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), and the program regulations which implement this section (24 CFR 1000.18-20) and the Program Regulations for the Indian Community Development Block Grant (ICDBG) Program (24 CFR Part 1003.605) which implement the

requirements and authorities of Section 104(g) of Title I of the Housing and Community Development Act of 1974, as amended.

For applicable programs, government entities acting as Responsible Entities (RE) will conduct the environmental reviews for ONAP funded projects. If an entity other than HUD assumes HUD's environmental responsibility, ONAP Area Office staff will assume a role of providing support and guidance to the entity throughout the environmental review process. This guidebook will be a quick reference for HUD personnel in guiding the Responsible Entities and non-RE Recipients.

This guidebook will also address ONAP reviews under 24 CFR Part 50 in those situations when a tribe chooses not to assume environmental review and decision-making responsibilities for an IHBG, Section 184, or NAHASDA Title VI project.

The guidebook serves as a resource for those undertaking the role of environmental reviewer by providing the reader with user friendly tools, techniques, and helpful hints. The guidebook will help the RE and ONAP staff navigate HUD's requirements for compliance with the National Environmental Policy Act (NEPA) and related environmental laws and guide the RE through the certification and approval process. Finally, this guidebook serves as the core structure for the materials used in the field training sessions.

D. How Do I Use This Guidebook?

NEPA environmental review requirements are regulated by 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibility" or 24 CFR Part 50, "Protection and Enhancement of Environmental Quality."

This guidebook was developed as a working tool to guide REs, non-RE Recipients, and ONAP staff through the environmental review process. After becoming familiar with the entire guidebook, the user should refer to individual sections as needed. ONAP Grants Management staff are encouraged to use this guidebook as a reference. The document includes reference points such as tools and techniques, checklists, process maps, and other helpful hints for performing an effective environmental review. Look for graphically highlighted information, definitions, warnings, and requirements, often noted in the left-hand column, for additional facts and help. You will not have to read the whole guidebook to find the information you are looking for. Once you have identified the points of reference you want to pursue, simply proceed to the table of contents and locate the subject's relevant tab heading. A description of each of the sections is provided on the following page.

E. Description of Guidebook Tabs

Tab I: Overview of the Guidebook	This section is the introduction.
Tab II: Introduction to HUD and Part 50/58 Regulatory Responsibility	This section introduces the user to HUD's environmental policy and the procedures behind it. It also introduces the primary participants in the environmental review process.
Tab III: Legislative Framework	This section addresses the relevant laws and regulations associated with the environmental review process and summarizes the funding, time, and documentation constraints on the Recipient of HUD assistance and on the RE throughout the environmental review process.
Tab IV: Assumption of Environmental Responsibility	This section provides all involved and interested parties with a review of the responsibilities and expectations of all parties.
Tab V: Conducting the Environmental Review	This section guides the user through the environmental review process. REs and ONAP staff can use this section for guidance to comply with environmental review requirements and responsibilities. Highlights include references for forms, manuals, and other tools needed for each step of the process.
Tab VI: Monitoring and Training	This section covers the roles and responsibilities for oversight in the environmental review process.
Tab VII: Appendices	The appendices serve as a key resource for ONAP staff and REs. This section includes relevant information such as definitions, abbreviations, contact names, phone numbers, detailed information on related laws and authorities, HUD recommended formats, examples of compliance forms, and relevant World Wide Web sites.

F. Guidebook Terms

Some of the guidebook's most commonly used terms are provided in the following table. Additional terms and definitions can be found in Appendix H.

Term	Description
• Area ONAP Administrator	• HUD official responsible for administering funds to a Recipient under a given program
• EA	• Environmental Assessment
• EIS	• Environmental Impact Statement
• ERR	• Environmental Review Record
• FONSI	• Finding of No Significant Impact
• HUD FO	• HUD Field Office/Area ONAP
• NAHASDA	• Native American Housing Assistance and Self-Determination Act of 1996
• NEPA	• National Environmental Policy Act of 1969
• NOI/EIS	• Notice of Intent to Prepare an EIS
• NOI/RROF	• Notice of Intent to Request Release of Funds
• ONAP	• Office of Native American Programs
• Part 50	• 24 CFR Part 50: Under this rule, HUD has direct responsibility for environmental reviews
• Part 58	• 24 CFR Part 58: Requirements and procedures when a Responsible Entity assumes responsibility for environmental reviews.
• Recipient (of HUD assistance)	• Tribally Designated Housing Entity (TDHE), Tribe, or other entity receiving funds from HUD
• Release of Funds (ROF)	• HUD issuance of authorization to use funds - HUD 7015.16

Term	Description
• Request for Release of Funds (RROF)	• Recipient's request for authorization to use funds - HUD 7015.15 - includes certification of compliance with environmental review responsibilities
• Responsible Entity (RE)	• The entity assuming HUD's environmental responsibility; performs the environmental review
• Tribe	• Federally recognized Native American community, including Alaska Native villages

II. Introduction

Table of Contents: Section II Introduction to HUD and Part 50/58 Regulatory Responsibility

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C. HUD's Environmental Goals 2-4

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II. Introduction to HUD and Part 50/58 Regulatory Responsibility

Section II provides an introduction to HUD for those Recipients of funds and the Responsible Entities affected by the environmental review procedures regulated by 24 CFR Parts 50 and 58. HUD's relationship to the Recipients and Responsible Entities is also described. As you will see, HUD environmental review regulations provide a framework for these parties to accomplish HUD's broader mission while being sensitive to issues of environmental compliance.

"The mission of the U.S. Department of Housing and Urban Development is to help people create communities of opportunity." - HUD Mission Statement.

A. HUD's Mission to Serve

In recent years, the Department of Housing and Urban Development (HUD) has refocused its resources to meet the priority needs of the communities it serves. In order to better meet these needs and assure efficient implementation of housing and community development initiatives, HUD is committed to empowering communities to determine and achieve their own priorities.

HUD must accomplish its mission, including appropriate consideration of the environment, within the current climate of reform in the public sector. The changes occurring in HUD are representative of a larger movement toward decentralization in the Federal government.

The overall goal of decentralization is to improve management at all levels. For most Federal departments, the purpose of decentralization is twofold: first, to move as many human and other resources closer to the point of service delivery; and second, to simplify internal agency business processes in order to deliver those services in a more efficient and cost effective manner.

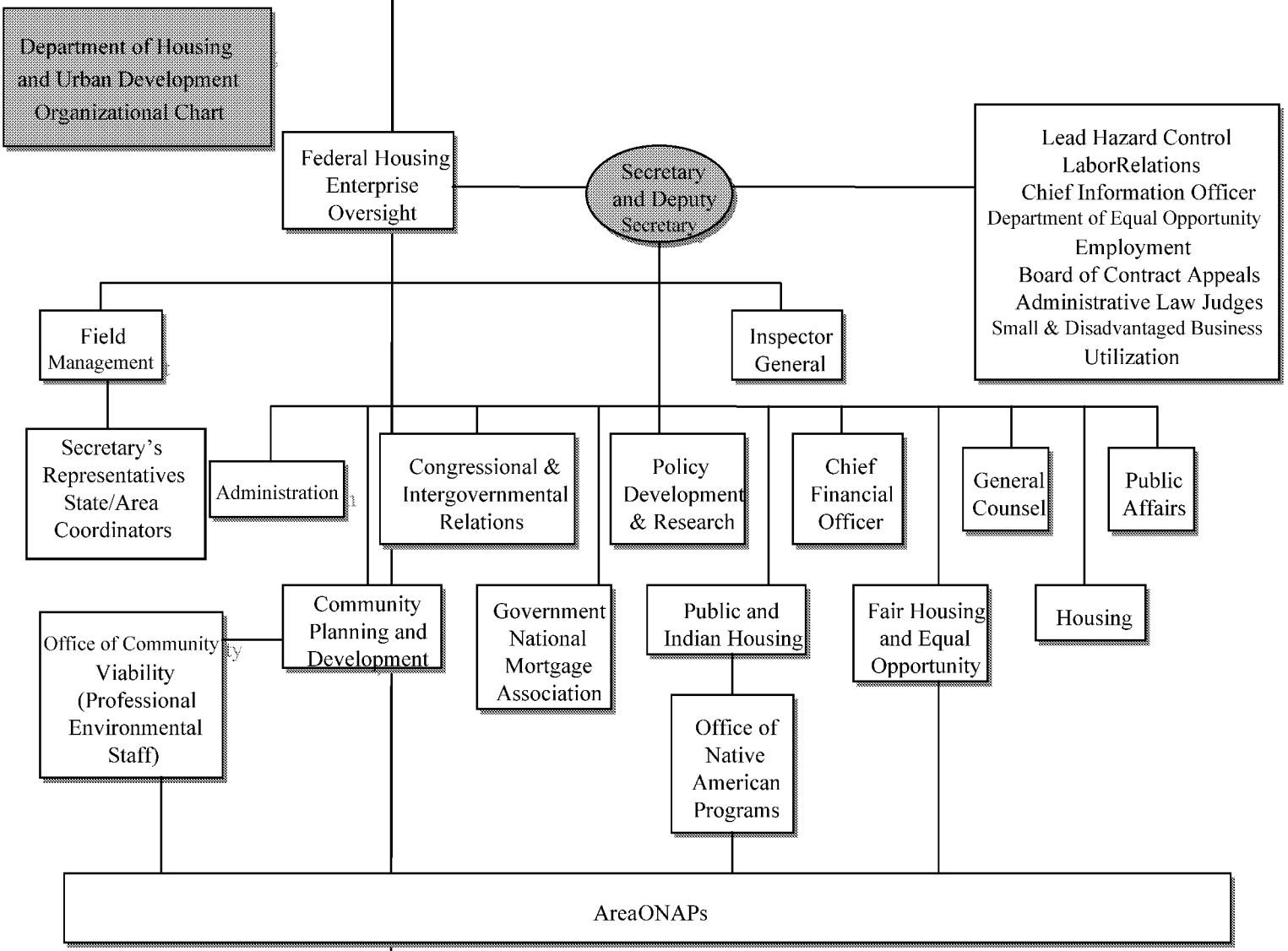
As program management, oversight, and delivery are decentralized, the challenge to HUD is to manage risk and measure performance in an environment where responsibilities reside with the fund Recipients and with local entities rather than within HUD.

24 CFR 50: Protection and Enhancement of Environmental Quality

- Under this rule, HUD has direct responsibility for environmental reviews. This regulation mandates that environmental reviews be carried out

according to NEPA and related laws and authorities for every applicable HUD program. This regulation provides the guidelines for environmental reviews conducted by HUD, including IHBG and Title VI projects and Section 184 Loan Guarantees, which qualify for review under 24 CFR Part 58 but for which the Recipient has chosen to allow HUD to retain responsibilities.

B. HUD's Organizational Structure



HUD helps create healthy, viable communities through a series of assistance programs which are administered by one of three offices: the Office of Community Planning and Development (CPD), the Office of Housing, and

the Office of Public and Indian Housing (PIH), which includes ONAP. Through development, restoration and rehabilitation, demolition, financing, and research activities, these programs attempt to make safe, affordable housing available for all communities.

Functions of the Office of Public and Indian Housing (PIH)

PIH aids local Housing Authorities (HAs) that provide decent, safe, affordable housing for economically disadvantaged populations. Local HAs own and operate low-income public housing developments while PIH furnishes technical and financial assistance in planning, developing and managing these developments. It is HUD's responsibility to determine whether Federal requirements are met throughout the creation and operation of these developments. ONAP is an office within PIH that facilitates the government-to-government relationship between tribal governments, Alaska Native villages, and the United States. ONAP administers programs which provide assistance to tribes, Alaska Native villages, Tribally Designated Housing Entities (TDHEs), Native American families and individuals to meet their housing needs and other community and economic development activities.

- **Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) - Indian Housing Block Grant (IHBG)**
  NAHASDA reorganizes and simplifies HUD's system of housing assistance to Native Americans by eliminating several separate programs of assistance (all of those under the United States Housing Act of 1937) and replacing them with a single block grant program, the Indian Housing Block Grant (IHBG) Program, made directly to the tribes, or Tribally Designated Housing Entities (TDHEs). NAHASDA requires each tribe to develop an Indian Housing Plan (IHP) that forms the basis for tribal housing activities and the formulation of the IHBG.

  In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide Federal assistance to and for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance.

- **Title VI - Federal Guarantees for Financing of Tribal Housing Activities**
  This program is also authorized under NAHASDA. It allows HUD to guarantee loans and other financial obligations secured by IHBG recipients for affordable housing activities.

The regulations within 24 CFR Part 58 do not apply to these ONAP activities. Any necessary reviews regarding these issues will be conducted by HUD under Part 50.

- **Section 184 - Loan Guarantee Program**
  This program allows HUD to guarantee loans secured by Indian families, TDHES, or tribes to buy or construct single family (1-4 units) properties located in Indian Country, tribally-designated areas, and reservations.

- **Indian Community Development Block Grant Program (ICDBG)**
  The Indian Community Development Block Grant Program (ICDBG) is a competitive program awarding block grants to Tribes for viable economic and community development projects. ICDBG funds can include economic development construction, housing rehabilitation, construction or rehabilitation of existing buildings, and land acquisition for infrastructure.

- In addition, the Office of Public and Indian Housing also conducts service and supportive activities for residents of Indian housing as well as activities to encourage efficiency and innovation among recipients through the following programs:

  - Public and Indian Housing Drug Elimination Program
  - Economic Development/Supportive Services

Environmental protection is intended to benefit residents, neighborhoods, and communities, as well as air, land, and water of the U.S. The goals of environmental protection are to protect human health while preserving the health, beauty, and future use of our environment.

C. HUD's Environmental Goals

HUD's mission and the specific programs it implements to accomplish this mission have an effect on the environment and are affected by Federal regulations developed to provide environmental protection. The identification and management of these environmental impacts are accomplished by complying with a variety of Federal, State, and local regulations and through participation in voluntary programs pro-actively initiated by stakeholders including leaders from the business and financial community, industry, and local communities. HUD's environmental goals are driven by the need to consider the environmental impacts of its programs and projects and to insure compliance with environmental regulations.

HUD has created an Environmental Office, currently organized within the Office of Community Viability and implemented under CPD. The Environmental Office works with HUD program directors to create and implement the policies and environmental management systems for the agency. The Environmental Office supports each program's environmental efforts by providing expert technical advice, training and tools. Support is also available to help the programs evaluate the success of procedures in meeting goals and objectives by providing environmental expertise when it is required.

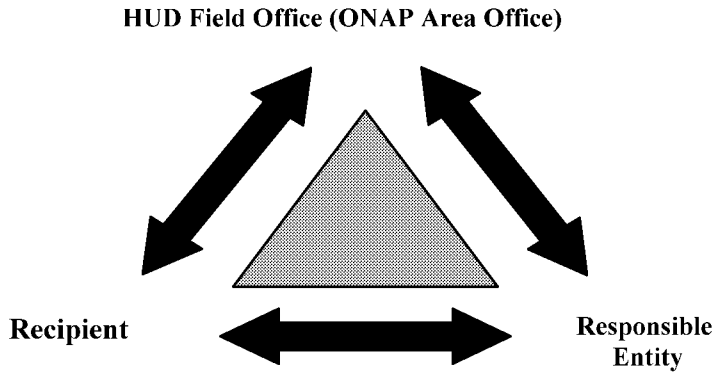
HUD assisted projects may face such diverse environmental issues as air and water pollution, noise and traffic considerations, and proximity of hazardous waste sites. At times projects can face the challenge of conducting progressive development in harmony with cultural and historical preservation. All projects must strive to meet sustainable environmental and economic goals including environmental equity for all classes, and races, of people.

D. HUD at Work in the Community

The nature of HUD-assisted projects dictates an ongoing, cooperative relationship among ONAP offices, tribal governments and authorities, and TDHEs. These community partners have the greatest stake in the development and implementation of successful projects to provide quality shelter and to preserve a safe and healthy environment for Native Americans. As HUD encourages greater community involvement in decisions about HUD programs within the community, the tribal governments and TDHEs have increased flexibility and control, along with increased responsibility, over the use and allocation of funds within the community.

HUD's Relationship to the Recipient and the Responsible Entity

HUD's community-forward structure **relies on successful interactions between the HUD Field Office (ONAP Area Office) and two critical entities within Native American communities: the Recipient and, if different than the Recipient, the Responsible Entity.** Cooperation and a commitment to shared goals between these parties will ensure decision making and program execution that are most beneficial to the community. As depicted in the diagram below, the relationship between HUD, the Recipient and the Responsible Entity is a mutually inclusive three-way partnership.



HUD provides funding to the Recipient. The Recipient provides housing and community development assistance to further the goals of HUD and the

Responsible Entity. As part of that effort, the Recipient's projects undergo the appropriate or required environmental reviews. The RE reviews and assumes HUD's responsibility for the performance of the environmental assessment. The RE's assumption of responsibility also satisfies its own objectives for providing its community with needed housing and community development projects. The Recipient may provide the relevant project information to the Responsible Entity, allowing the RE to perform its review responsibility and HUD to accomplish its environmental goals. HUD finances the cost of this process as a component of the Recipient's funding. If necessary or appropriate, the Recipient may utilizes a portion of these funds to compensate the RE for conducting the environmental review.

The ONAP Area Office (HUD)

Under Part 58 the Area ONAP Administrator is responsible for ensuring that environmental reviews are performed as required. The Area ONAP is comprised of two divisions, Grants Administration and Grants Evaluation. The Grants Administration staff administers and manages the grants. These staff are involved in the environmental review process because they are responsible for making sure that grant Recipients meet regulatory requirements. Grants Evaluation staff get involved after a grant has been awarded. These staff monitor the Recipient to ensure that the grant money is being used properly and as stated in the Indian Housing Plan (IHP) or application for assistance. Whether conducted internally by HUD or externally by a Responsible Entity, the Area Office Administrator or ONAP staff designated by the Administrator is responsible for managing the environmental review of projects funded under a given program. This includes any reviews done under Part 50. The Administrator or a designated ONAP representative will manage the environmental review function and coordinate all interactions between the Recipient, the RE, and HUD.

Definition of Recipient

The Recipient

The Recipient is the entity receiving funding or assistance directly from HUD. Under the IHBG program and the Title VI loan guarantees program, the Recipient may be a tribe, a Native Alaskan village, or a tribally designated housing entity (TDHE). Under the ICDBG program, the Recipient is a tribe or Native Alaskan village, although there are some exceptions. Under the Section 184 - Loan Guarantee program, the Recipient of assistance is a Native American family, a TDHE, a tribe, or a Native Alaskan village.

Definition of Responsible Entity

The Responsible Entity

The Responsible Entity (RE) is the entity that assumes HUD's environmental responsibility for the project under Part 58. Environmental responsibility under the National Environmental Policy Act (NEPA) includes responsibility for environmental reviews, decision making and action. Because the RE will be responsible for the project's environmental consequences (if necessary) in Federal court, an entity must have general governmental capabilities in order to be legally qualified to be an RE. The RE can only be an Indian tribe or Alaska Native village.

The RE will also conduct the environmental review, using a combination of in-house resources, outside environmental consultants, and the Recipient's own resources.

Requirements of an RE

Within its organization, the RE must have a Certifying Officer, who will be legally responsible for the content of the environmental review, for implementation of the subsequent action and, if necessary, will represent the Responsible Entity in Federal court. The Certifying Officer should be the Tribal Chairperson, (Chief Executive Officer of the jurisdiction) or a person delegated environmental responsibilities by the tribe. The RE must also have staff resources qualified to perform an environmental review or be able to contract the performance of the environmental review to a qualified consultant. In signing the Request for Release of Funds and Certification (form HUD 7015.15), the Certifying Officer attests to the performance of the environmental review by a qualified person and its compliance with NEPA and HUD regulations. The Certifying Officer should have either direct knowledge of the performance of the environmental review **or** have in place a system that ensures accurate and compliant performance. The Certifying Officer must also ensure that the RE reviews and comments on all EISs prepared for Federal projects that may have an impact on the Recipient's project.

Finally, the Responsible Entity must have the ability to prepare and maintain a full set of the documents associated with the environmental review.

III. Legislative Framework

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III. Legislative Framework

A. Introduction

On April 30, 1996, the final rule on Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities was published. This final rule amended the existing environmental regulations in 24 CFR Part 58. Technical amendments to this rule were published on March 30, 1998.

24 CFR Part 58, as amended, provides the context for assumption of HUD's environmental review responsibilities by a third party (the Responsible Entity) for selected HUD programs. The Responsible Entity can be one the following:

- A recipient of HUD assistance (if the recipient has the legal capacity)
- A different eligible entity which assumes responsibility on behalf of the recipient
- For ONAP administered programs, the RE will be the Indian tribe or Alaska Native village as defined in applicable statutes or program regulations

The final rule provides the RE with procedures to carry out environmental reviews in accordance with:

- The National Environmental Policy Act of 1969 (NEPA)
- The NEPA-implementing regulations of the Council of Environmental Quality (CEQ)
- Other NEPA-related Federal environmental laws and authorities

These regulations are the primary drivers of HUD's environmental review process. A summary of each of the relevant rules and regulations associated with the execution of environmental reviews is provided on the following pages. See Appendix G: Related Laws and Authorities for a review of all relevant legislation.

NEPA

The National Environmental Policy Act of 1969 (NEPA)

- This Act (42 U.S.C. 4341 et. seq.) establishes the national charter for protection of the environment. Specifically, this Act mandates that all Federal actions that affect the quality of the human environment follow established policies and goals that address the following:

- Environmental impacts
- Mitigation of adverse effects
- Consideration of alternatives
- Long-term and short-term effects
- NEPA does not mandate specific results but instead prescribes a public process for evaluation of environmental issues as part of the decision making process for all major Federal projects. NEPA does mandate the preparation and maintenance of certain planning documents including one or more of the following:
- Exemption/categorical exclusion not subject to related laws and authorities
- Categorical exclusion subject to related laws and authorities
- Environmental Assessment[1]
- Finding of No Significant Impact
- Environmental Impact Statement
- Record of Decision
- NEPA also established the Council on Environmental Quality (CEQ).

[1] In the context of the NEPA statute, "environmental assessment" refers to a scientific study and analysis to determine the environmental impacts that the proposed project may have on the environment. Other fields, such as real estate appraisal, also refer to environmental assessments - however, these fields are actually referring to property surveys or "due diligence" of real estate and not to the same type of study that NEPA refers to.

Council on Environmental Quality (CEQ)

In response to widespread and growing public concern regarding the quality of the nation's environment in the late 1960s, Congress established the Council on Environmental Quality (CEQ) within the Executive Office of the President. Specific functions of the CEQ include the following:

- Formulate and recommend to the President national policies that further environmental quality
- Perform a continuing analysis of the changes or trends in the national environment
- Review and appraise programs of the Federal government to determine their contributions to sound environmental policy
- Oversee implementation of NEPA and the CEQ regulations, including approving Federal agency regulations
- Interpret NEPA and CEQ regulations for agencies and citizens
- Provide consultation to Federal agencies regarding legislation and litigation
- Facilitate interagency disputes
- Conduct studies, research, and analysis relating to ecological systems and environmental quality
- Assist the President in the preparation of the annual environmental quality report to the Congress.

24 CFR 50

24 CFR 50: Protection and Enhancement of Environmental Quality

- Under this provision, HUD is responsible for environmental reviews. The regulation mandates that environmental reviews be carried out according to NEPA and related Federal laws and authorities for every applicable HUD program. It also provides the guidelines for environmental reviews conducted by HUD, including projects which qualify for review under 24 CFR Part 58 but for which no Responsible Entity can be designated. In addition, it is used by HUD under IHBG, Title VI, and Section 184 when the Part 58 option is not chosen.

  Section 105 of NAHASDA establishes the ability of the Secretary to develop regulations to designate tribes to assume environmental review responsibilities. It also allows the Secretary to release funds for projects/activities at the request of the Recipient if the tribe as RE assumes all of the responsibilities for the environmental review, decision making, and action.

If environmental responsibilities are not assumed, HUD guidance on how to implement Section 106 of NAHASDA has been prepared for ONAP administrators, Field Environmental Officers, and IHBG Recipients. This guidance, Notice PIH -99-37, is included in the guide book in Appendix C.

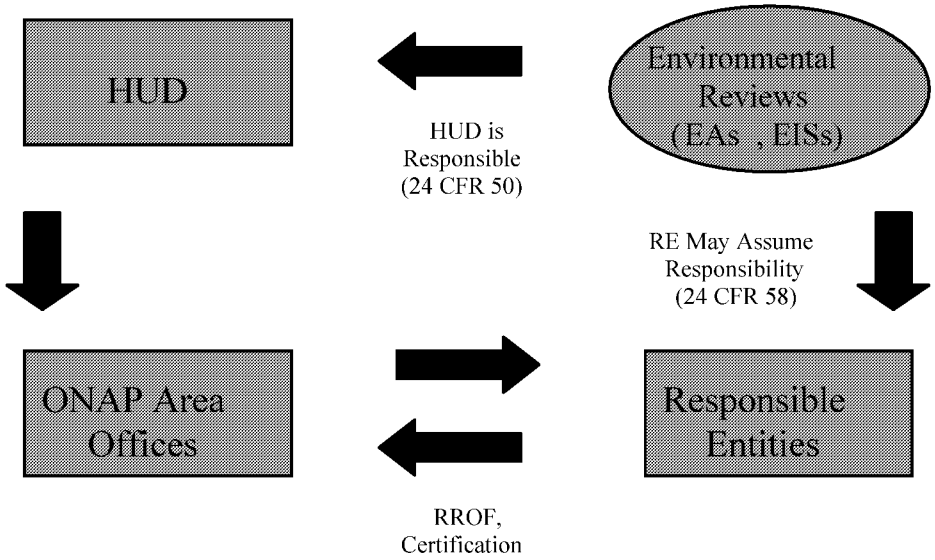
24 CFR Part 58: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

- Part 58 provides the legislative framework and guidance for Recipients of HUD funding and Responsible Entities that assume environmental responsibility for a project. Part 58 provides instructions to the Recipients and Responsible Entities for conducting an environmental review for a particular project or activity and for obtaining approval of a Request for Release of Funds (RROF).

B. Part 58: More Flexibility

Part 58 governs entities that assume HUD responsibility for carrying out environmental reviews, including Environmental Assessments (EAs) and Environmental Impact Statements (EISs). This regulation also provides definitions for determining exemption and categorical exclusion.

The diagram illustrated below depicts the scenario for the ONAP Area Office and the Responsible Entity.



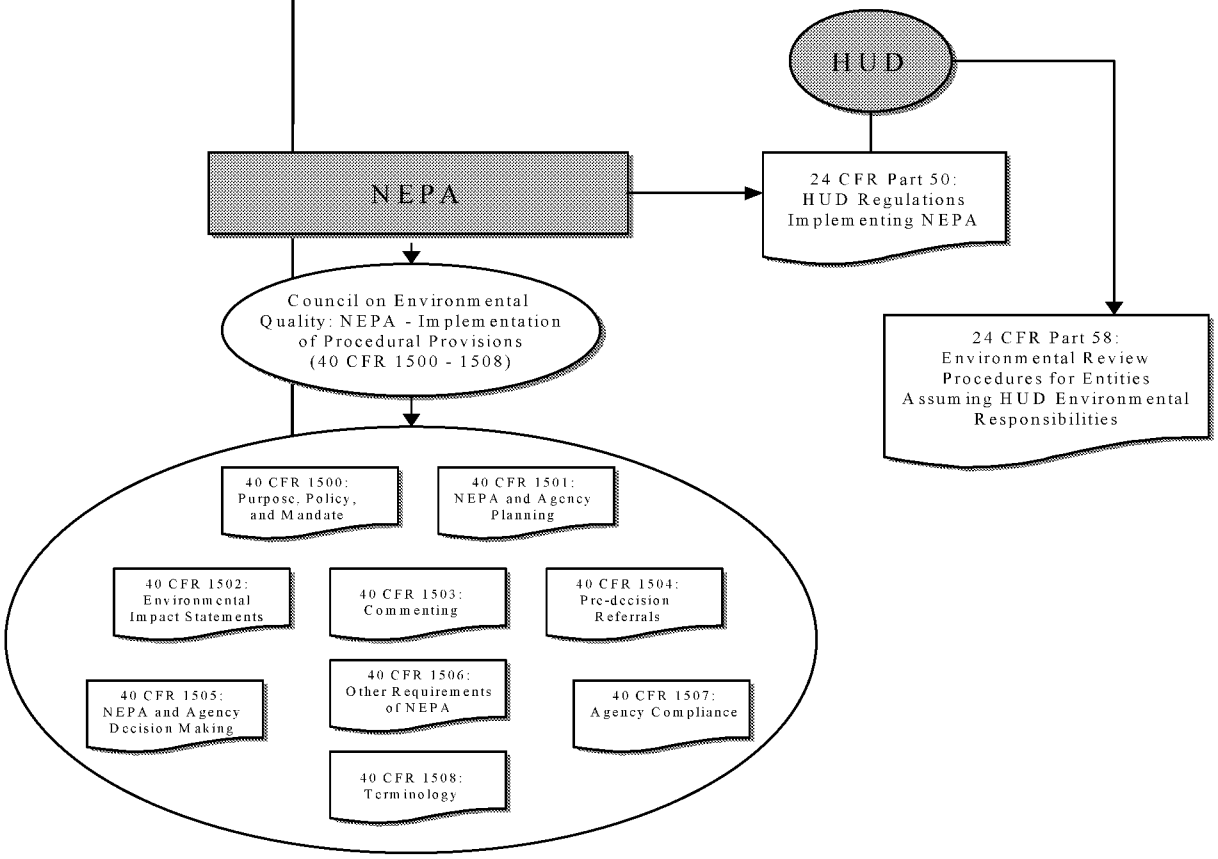
Question: What Other HUD Programs Are Affected?

Part 58 covers the programs listed below. Hence, the Responsible Entity may assume environmental responsibilities for the following HUD programs:

1. Indian Housing Block Grant (IHBG) Program
2. Title I Community Development Block Grant (CDBG) Program (the Responsible Entity **must** assume HUD's environmental responsibilities when administering this program)
3. NAHASDA Title VI Loan Guarantees for Financing of Tribal Housing Activities
4. Section 184 Loan Guarantee Program.

C. Hierarchy of Environmental Authorities

NEPA is the basic national charter for the protection of the environment. It establishes policies, sets goals, and provides the means for carrying out the policies. The Council on Environmental Quality (CEQ) is the principal agency responsible for the administration of NEPA. CEQ has developed regulations that Federal agencies must follow to comply with NEPA. In turn, Federal agencies, such as HUD, have developed their own agency-specific regulations to carry out CEQ regulations as shown in the following graphic.



D. Related Laws and Authorities

NEPA-related laws and authorities

There are a number of environmental statutes and authorities related to NEPA that are included in HUD's implementation of environmental protection. The issues covered by these laws and authorities must be considered and addressed during the review of a project. Below is a brief summary of the related legislation as it applies to HUD's mission and programs.

Historic Preservation
www.achp.gov/index.html

The National Historic Preservation Act (NHPA) of 1966 mandates protecting sites, buildings, and objects with historic or cultural significance. HUD compliance with NHPA involves identifying the effects of proposed projects on properties that are listed on or are eligible for inclusion on the National Register of Historic Places, and affording the Advisory Council on Historic Preservation an opportunity to comment on these effects.

Toxic Hazards
www.EPA.gov

As directed by the criteria and standards specified for HUD projects in 24 CFR Part 51, the effect of any existing hazards—chemical or radioactive materials, flammables and explosives, toxic materials—on proposed HUD projects should be minimized.

Noise
www.hud.gov

The Noise Control Act is concerned with noise sensitive land development actions occurring where noise is unacceptably high. It applies to all HUD actions. The regulations in 24 CFR Part 51 contain standards for assessing compliance with the Act.

Environmental Justice
es.inel.gov/oeca/oej.html

Executive Order 12898 on Environmental Justice requires that no portion of the population be unfairly burdened by the adverse environmental impacts of a Federal activity. HUD projects planned for areas of predominately low-income or minority populations or for areas which are primarily nonresidential should pay special attention to this issue.

Air Quality
www.aqd.nps.gov/natnet/ard/inters.htm

The Clean Air Act pertains to activities which will lead to an increase in air pollution or activities which will expose humans to increased air pollution. Screening to determine if proposed sites have unacceptable ambient air quality will be most relevant for HUD activities.

Floodplains
www.FEMA.gov
www.aspensys.com/femamap/femahome.html

Executive Order 11988 on Floodplain Management discourages Federal support of floodplain development. HUD compliance is an issue for projects proposed for sites located in the floodplain.

Wetlands
h2osparc.wq.ncsu.edu/info/wetlands/protect.html

Coastal Areas
wave.nos.noaa.gov/ocrm/czm

Endangered Species
www.fws.gov/~rendspp/endspp.html

Farmlands Protection
www.neg.nrcs.usda.gov

Wild and Scenic Rivers
www.nps.gov/ccso/wildriver.html

Executive Order 11990 on the Protection of Wetlands discourages Federally assisted construction in wetlands. This is an issue for HUD if the proposed site involves wetlands.

Under the Coastal Zone Management Act of 1972, any HUD activity proposed for a coastal area covered by a state coastal zone management plan must be compatible with the management plan. The Coastal Barrier Resource Act prohibits any HUD activity which encourages construction or development of an undeveloped coastal barrier resource.

The Endangered Species Act of 1973 mandates that Federally assisted activities not jeopardize listed species or their habitat. HUD activities which are proposed for areas harboring listed species must avoid modifying or destroying their habitat.

The Farmlands Protection Policy Act of 1981 discourages Federal activities that would convert farmland to nonagricultural purposes and applies only to HUD activities proposed for designated farmland areas.

Any HUD activities which might affect a river included in the Nationwide Inventory must preserve the river's designation under the Wild and Scenic Rivers Act of 1968.

E. Tools for Environmental Reviews

The following table describes several of the technical tools available to assist in conducting the environmental review.

Technical Tools Available	Description
• E1528-93: Standard Practices for Environmental Site Assessments Transaction Screen Process - ASTM	• This manual establishes standard practices for environmental site assessments; specifically, the transaction screen process of the review for toxic hazards.
• E1527-94: Standard Practice for Environmental Assessments - ASTM	• The purpose of this manual is to define good commercial and customary practices for conducting environmental assessments of toxic hazards.
• American Society for Testing and Materials (ASTM)	• This organization can provide industry standards and technical expertise for executing an environmental assessment of toxic hazards.
• Guidebook for Siting HUD Assisted Projects Near Hazardous Facilities	• This guidebook addresses acceptable separation distances between project sites and hazardous or flammable materials.
• The Noise Guidebook	• This HUD guidebook provides procedures and HUD standards for addressing issues of noise moderation in new development in compliance with the regulations at 24 CFR Part 51(B).

F. Statutory or Regulatory Restrictions

Violation of these restrictions will be cause for the HUD officer to disapprove the certification/RROF later in the process.

This section includes an overview of the constraints that the environmental review process places on both the Responsible Entity and the Recipient. These issues should be addressed as early as possible in the process because they will affect the planning and allocation of time, resources, and funds.

The RE should be aware of these requirements prior to beginning an environmental review in order to avoid unnecessary or unexpected costs and delays. The Recipient should be aware of and abide by these restrictions or risk delay, loss of funds, or legal sanctions.

Time periods are in calendar days and begin on the morning following publication or postmark of the relevant document.

Time Periods

This section addresses the time constraints for initiating and conducting the environmental review as well as for making contact and disseminating information. All explicitly stated time periods for this process are mandatory under Part 58. Other time estimates are included only as guidance. The RE should inform the Recipient of the anticipated timeline for completing the environmental review and obtaining the release of funds.

The following table shows the time requirements for reporting, commenting, and approval under HUD and NEPA regulations.

Activity	Duration of Comment Period
FONSI Notice	15 days (from date of publication) 18 days (from date of posting) 30 days (for exceptional circumstances)
NOI/RROF	7 days (from date of publication) 10 days (from date of posting)
Combined FONSI and NOI/RROF	15 days (from date of publication) 18 days (from date of posting)
ROF	15 days
NOI/EIS	15 days
Notice of Public Hearing	15 days
Draft EIS	45 – 90 days
Final EIS	30 days

You will often need to work with other agencies when reviews are done - good working relationships are critical.

Most interagency communication should specify reasonable deadlines to ensure a timely response. The RE should however, take extenuating circumstances into account and allow some flexibility in proposing deadlines for review and comment. With this in mind, the RE should be willing to extend the timeline depending on the anticipated or expressed level of interest and the number of agencies involved.

Limitations on Activities Pending Clearance

According to the regulations in 24 CFR Part 58.22, the Recipient cannot commit HUD funds to the activity or project (with the exception noted below) until the certification and RROF have been approved by HUD. This includes actual work on the project as well as the commitment of funds for an activity. In addition, the Recipient cannot commit non-HUD funds on activities related to the project which will affect the environment and limit

options at the site. No expenditures, regardless of source, can be made for an activity related to the project which will have an adverse environmental impact or which will limit the choice of otherwise viable alternatives. In general, the Recipient may use HUD funds to conduct testing and appraisal and other non-physical activities prior to the approval of the RROF and certification. Activities which the RE has determined to be exempt, categorically excluded, or not subject to the related laws and authorities are allowed.

The purpose of these limitations is to avoid biasing the environmental review through the amount of work completed in a desired direction or the potential loss of funds and labor by disapproving an in-process project.

Both the Responsible Entity and the ONAP official should ascertain that the Recipient understands and will abide by these limitations.

NOTE that these regulations cover the commitment of HUD assistance funds as well as other project activities funded by non-HUD sources.

Land Purchase

Land options can be purchased as long as the recipient can withdraw based on the environmental review findings.

The Recipient can enter into an option agreement on a proposed site prior to completion of the environmental review provided the Recipient has the right to withdraw from the option based on the outcome of the environmental review and provided the option price is nominal. Third-parties are not limited in option purchases as long as they are not recipients of HUD funding, have no environmental responsibility, and have no authority to approve or disapprove the project. Funding can be committed for relocation assistance as long as the relocation is required by 24 CFR Part 42.

Financial Assistance for Environmental Reviews

The expenses associated with conducting an environmental review should be carefully managed. While the Recipient may be using HUD provided funds, use of these funds for this purpose is subject to various regulations depending on the funding program.

The RE may require compensation from the Recipient for assuming the environmental responsibility for a project. The Recipient may pay the RE for these services in accordance with Federal procurement regulations (24 CFR 85.36) or pursuant to a sub-recipient agreement (24 CFR 85.21). In most cases the Recipient will use program specific funds for the review. It is in everyone's best interest to encourage moderate fees among potential Responsible Entities and to emphasize a streamlined review process.

The heart of compliance is documentation.

Requirements for Documentation

A written environmental review record (ERR) needs to be maintained by the RE. A minimal amount of documentation of the environmental review process is required even in cases of exemption, exclusion, or other early exit of the review process. Environmental compliance determinations need to be documented both in the ERR and in the Recipient's project file. All or part of the ERR may be used as evidence in any environmental litigation connected with the project.

The Environmental Review Record (ERR)

The ERR may be used as evidence in litigation.

For every project, an Environmental Review Record must be maintained in written format and available for public review. Even projects which are exempt or excluded from the environmental assessment and compliance regulations must have an ERR.

The ERR contains all of the documentation that was produced during the review and that was used as evidence for compliance and decision making. The ERR must include:

- Environmental review documents
- Letters and other correspondence from concerned agencies addressing compliance with NEPA-related laws
- Written determinations of the exempt or categorically excluded status of the project
- Source documents and base data, either by reference or inclusion, which have been cited as evidence in the EA or EIS
- Public notices and other publications regarding the review, finding, and request for release of funds

Environmental Review Record Checklist:

- Describe the project and the activities that the recipient has determined to be a part of the project.
- Evaluate the effects of the project or activities on the human environment.
- Document compliance with applicable laws and authorities, specifically 24 CFR Parts 58.5 and 58.6.
- Record the written determinations and other review findings such as exemption or categorical exclusion or finding of no significant impact.
- Include public comments and public notices.

G. Actions Requiring Documentation

The table below provides a compilation of all of the actions involved in the HUD environmental review process that require documentation. As a cross-reference tool, the table provides the user with all points within the environmental review process where a given document might be generated.

Document	Description	Completed By	Triggered By
HUD Form 7015.15	Request for Release of Funds and Certification	RE and Recipient (if different from RE)	Categorical Exclusion; FONSI; ROD
NO FONSI	Public Notice of FONSI	RE	EA (with finding of no significant impact)
NO RROF	Public Notice of Intent to RROF	RE	Categorical exclusion (subject to 58.5), Completion of public comment on FONSI
NOI FONSI/RROF	Combined Public Notice of Intent to RROF/FONSI	RE	EA (with finding of no significant impact)
HUD Form 7015.16	Authority to Use Grant Funds	ONAP	HUD Form 7015.15
Environmental Assessment (EA)	Basic environmental analysis and conclusions	RE	No determination of exemption or categorical exclusion, or EIS
Statutory Checklist: Regulatory Worksheet	Addresses technical issues under 58.5	RE	Categorical Exclusion Subject to 58.5
Environmental Impact Statement	More extensive environmental analysis and conclusions	RE	Finding of significant impact

H. Roles and Responsibilities Matrix: Statutory or Regulatory Restrictions

The following table provides regulatory reference information corresponding to the information presented in the previous section.

Tasks	HUD Oversight	Responsible Entity	Recipient (if not RE)
Time Periods	· Provide clarification to RE	· Be aware of the time periods concerning environmental reviews · Schedule target dates for public notices and filings accordingly · Inform Recipient of estimated time until filing of RROF · If the RE needs assistance, the RE should contact HUD FO personnel for guidance	· Communicate critical project or program deadlines to RE
Limitations on Activities Pending Clearance	· Provide guidance to RE and Recipient	· Be aware of the limitations and how they may apply to the Recipient's activities at the site during the process	· Do abide by limitations by not committing affected funds prior to approval of RROF
Financial Assistance for Environmental Reviews	· Encourage reasonable costing by the RE · Provide program-specific information on funding limitations to the Recipient.	· Price services in relation to reasonable level of effort expected in ER	· Conduct price or cost analysis before entering agreement · Follow Federal procurement guidelines in contracting with an RE
Requirements for Documentation	· HUD form 7015.16	· Maintain ERR · Document in writing when citing an exemption or exclusion · Provide documentation of determinations to Recipient	· Maintain documentation of determinations in project file

IV. Environmental Responsibility

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IV. Assumption of Environmental Responsibility

A. Introduction

This section presents information that is necessary and vital for the assumption of environmental responsibility under 24 CFR Part 58. It details how to identify the Responsible Entity (RE) and how the RE formally accepts and assumes the environmental responsibilities, including legal liability.

Environmental reviews for projects funded under the Indian Community Development Block Grant program are already conducted according to Part 58. Therefore, all ICDBG Recipients should already have the expertise and experience to act as Responsible Entities and, consequently, the material in this section should be familiar to them.

B. Identifying the Responsible Entity

The Responsible Entity is the party that assumes HUD's responsibility for carrying out the environmental review process in accordance with the provisions of law.

The following table reviews applicable HUD programs and identifies the appropriate Responsible Entity under Part 58.

HUD Program	Responsible Entity
Title I Indian Community Development Block Grant (ICDBG) Programs	The Responsible Entity is the recipient under the program.
NAHSDA Indian Housing Block Grant (IHBG) Program Title VI Federal Guarantees for Financing of Tribal Housing Activities Section 184 Loan Guarantee Program	The Responsible Entity is always an Indian Tribe

A non-Recipient Responsible Entity is the party that assumes environmental review responsibilities on behalf of a Recipient of HUD assistance.

In some cases the Recipient of HUD assistance and the Responsible Entity with respect to environmental responsibilities, may be two different parties. The Recipient of IHBG, Title VI or Section 184 Assistance may be a TDHE. Part 58 also provides guidance as to the determination of non-Recipient Responsible Entities, as highlighted in the table below.

When the Recipient is…	The Responsible Entity is…
TDHE	The beneficiary Indian tribe whose jurisdiction contains the project site.

Technical Capability

The RE must have the resources necessary to make an informed evaluation and decisions regarding environmental impacts. These resources may include independent consultants retained specifically for environmental work. Technical capability can be developed through a combination of education, experience, and training.

- Education - Does the designated environmental specialist have a college degree in a subject area providing knowledge of environmental issues? Preferred degrees might include environmental science, engineering, geology, biology or land use planning.
- Experience - Has the designated environmental specialist previously performed environmental assessments? Generally, one year of prior experience performing environmental assessments under the supervision of a qualified environmental specialist is sufficient experience.
- Training - Has the designated environmental specialist attended an accredited environmental assessment training course? Attendance at an accredited course, coupled with an acknowledged understanding of the information contained in this manual would usually deem the reviewer technically capable.

Administrative Capability

The retention period for environmental documents begins upon completion of the activities for which the documentation was prepared.

The RE must be responsive to ONAP, the Recipient and the public. The RE must have the resources necessary to comply with all document management and correspondence requirements associated with performing the environmental review and the assumption of environmental responsibility. The RE's record maintenance system may be as simple as maintaining organized paper files, or could include off-site archival, microfiching, and disposal of paper files. At a minimum it should provide for:

- Accessibility - Environmental reviews under NEPA are a public process. Therefore, documents produced in support of the environmental review should be available to the public upon request. During the public comment period, the ERR should be immediately available to the public. After the project is approved and funds released, the ERR should be accessible within a reasonable period of time. Most off-site archival document management programs allow for materials to be retrieved within two to five days.

- Retention - Environmental issues have a long liability timeline. The RE's record retention policy should at least comply with HUD's internal record retention policy of five years (after issuance of the project's actual development cost certificate) for environmental documentation. The RE may also consider the American Society of Testing and Materials (ASTM) guidelines for retention of environmental records which prescribes a 35 year retention.

The ultimate goal of the environmental review process, regardless of the entity carrying out the environmental reviews, is to achieve full compliance with the applicable provisions of law, and to ensure that HUD programs provide a safe and healthy environment to their beneficiaries.

C. Assuming the Responsibilities

The decision to assume the Responsible Entity role usually centers around four considerations: community need and interest in a project, legal liability, time, and cost. Under Part 58, HUD has attempted to understand each of these implementation risks and address them as practically as possible. The goal of NEPA and of HUD's implementation of NEPA is to:

- Increase efficiency when deploying limited HUD resources
- Address the desire of the Recipients and government entities to control projects at the local level
- Minimize the burden associated with compliance
- Should the tribe decide not to assume this responsibility, HUD will perform any required environmental reviews under part 50.

The RE may request that the Recipient perform some portions of the environmental review itself.

When assuming environmental review responsibility, the RE may request that the Recipient perform some of the environmental review tasks. In practice this is a way for the RE to minimize the impact on its own time and resources. However, because the RE will be responsible for environmental issues related to the project in Federal court, the RE should be careful to delegate only those tasks which are not decision making and which the Recipient can adequately perform, such as document searching, obtaining maps, etc. This type of relationship decreases the burden associated with the RE role and the potential cost of the environmental review to the Recipient.

Responsibilities of the Certifying Officer:

The Reviewer's Certifying Officer assumes the role of "responsible Federal official" as defined by NEPA, section 102. As such, the Certifying Officer:

- Is responsible for all of the requirements of NEPA, the provisions in 40 CFR parts 1500-1508, the related authorities in 24 CFR part 58.5, and the provisions of 24 CFR Part 58
- Is responsible to all persons or agencies seeking redress in relation to activities covered by the certification
- Represents the RE in Federal courts
- Reviews or comments on any environmental review documents prepared for Federal projects that might affect the Recipient's project.

Community Need and Interest in Project

Part 58 is designed to improve customer satisfaction by making it easier for Recipients and local governments to have increased control, autonomy, and flexibility in addressing the needs of the community. For the Recipient, participation in performing the environmental reviews provides the right to participate in determining who performs the environmental reviews and the timing and innovations considered while they are conducted.

For the RE, this means assuming legal and resource commitments in order to gain additional control over planning and local development decisions. Tribes are generally inclined to accept the community recognition and credit associated with a well designed and locally accepted HUD program project. For controversial projects, the tribe will appreciate the information flow and local review authority provided by the Part 58 procedures. These benefits must be obtained at a reasonable cost in terms of liability and local resource burdens.

Once the tribe determines that it is in its interest to assume the RE role, it must then evaluate the more practical legal risks and resource constraints which accompany the responsibility.

Legal Liability

The Responsible Entity's Certifying Officer assumes the legal role of the "responsible Federal official" as used in NEPA (section 102) and related statutes. This means that the RE is responsible for review, decision making, and action, and is accountable in the Federal courts to any entity seeking redress in relation to the actions certified by the environmental review. (Since 1978 there have been no cases of such environmental litigation under ICDBG). As such, it is important for the Recipient, when considering its legal risks in assuming the RE role, to focus on the subset of environmental litigation risk pertaining to environmental real estate or contaminated property transactions. The RE can protect itself from liability under NEPA by preparing and maintaining adequate NEPA documentation to prove that it properly considered environmental impacts prior to taking action and did not act in an arbitrary manner. Tools such as ASTM Guidance manuals and this guidebook are designed to clarify the specific scopes of activities related to conducting and reviewing environmental assessments, and to facilitate the process documentation requirements.

Time

The time commitments which accompany the RE role on any particular project are not overly burdensome. The average project requires an environmental assessment which, according to CEQ guidelines, can be done in a few days and should not require more than 30 days including information gathering. The time required to review the environmental assessment should only be a small portion of the time required to perform the assessments. The duration of the environmental review period may be more than thirty days due to the response time for replies and comments from relevant parties.

Cost

Environmental assessment and review funds are often needed prior to the release of funds for the full project. These funds are available to the Recipient upon acceptance of the Recipient's application or IHP during the project selection approval/review process. For those tribes who had already intended to participate in the environmental review process, these monies may actually help offset some of their current environmental department and review infrastructure costs. For those tribes with no existing infrastructure, the decision to assume RE review responsibilities should not require additional local funds. As previously described, the use of the Recipient's resources to perform some of the environmental review tasks is another way to limit costs and should lower the fee charged by the RE to the Recipient.

D. Frequently Asked Questions

Question: What is the difference between a Recipient and a Responsible Entity?

Answer: A Recipient is an entity that directly receives assistance under a HUD program. A Responsible Entity is the tribe that assumes HUD's environmental responsibility under NEPA. The RE is responsible for decision making and action and carries out the environmental review in accordance with applicable provisions of Federal environmental laws and HUD internal procedures. Under certain programs and circumstances, the RE could be a Recipient.

Question: What is a non-Recipient Responsible Entity?

Answer: Under HUD Native American programs, the RE is always the Indian tribe. This third-party entity is a non-Recipient Responsible Entity. For example, if an Indian tribe makes a concession or agreement for a private business to build a structure on tribal lands without actually selling the property to them (the tribe owns the land and the business owns the structure), then the tribe must still assume environmental responsibility.

Question: Can a Responsible Entity not assume environmental review responsibilities?

Answer: Yes. Under IHBG, Title VI, and Section 184, Part 58 responsibilities may be declined; the assumption of these responsibilities is voluntary. However, under the ICDBG program, the Recipient must assume these responsibilities unless a claim of legal incapacity is made and sustained by HUD. The assumption of environmental responsibilities by a non-Recipient Responsible Entity is voluntary. If it chooses not to assume these responsibilities, HUD will perform the review itself.

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V. Conducting the Environmental Review

5.1 Responsibilities

The entity assuming HUD's responsibility for environmental review is referred to as the Responsible Entity (RE).

24 CFR Part 58 identifies the entity receiving funding through a HUD program as the Recipient and identifies a government entity that assumes responsibility for carrying out the review requirements for HUD as the Responsible Entity.

It is important to remember that when a RE assumes environmental responsibility for a project, that RE will make and be held responsible for all decisions and determinations. ONAP personnel will be prepared to provide advice and guidance, answer questions and point to available resources.

Definition of ONAP Point of Contact

Although Part 58 shifts much of the responsibility of conducting an environmental review to the RE, HUD still retains responsibility for certain tasks during the initiation of the review and during the approval process. In addition, HUD will provide the Responsible Entity with a point of contact (POC) at the ONAP Area Office. The ONAP POC will provide the Responsible Entity with guidance regarding HUD rules and regulations, contact with other agencies, and the forms and documentation required by HUD. The ONAP POC's involvement and assistance will vary depending on the Responsible Entity and on the project.

HUD provides guidance only and is **not** liable for decisions or determinations made by the Responsible Entity.

As indicated in Section IV, the non-RE Recipient may perform some of the environmental review tasks outlined in this section. If this Recipient is performing some of the tasks, the same instructions included with this section apply. In addition, the non-RE Recipient must contact the RE for help, when needed, and must provide all documentation to the RE.

Use of ERR Guides

Use of ERR Guides

Throughout this section, references are made to ERR Guides. The ERR Guides are "fill-in-the-blank" tools and checklists that are intended to help the RE manage the environmental review process. These guides have been designed to help meet the documentation requirements for the ERR. These guides do not replace any required HUD forms. However, inclusion of the complete guides in the Environmental Review Record (ERR) is recommended as a means of achieving thorough documentation of the process. **ERR Guides are not Federal forms.**

In all cases the appropriate sections of 24 CFR Part 58 should be consulted.

5.2 The Environmental Review Process

The environmental review process consists of all the actions that a Responsible Entity must take to ensure compliance with 24 CFR Part 58.

The environmental review is a process consisting of all the actions that a Responsible Entity must take to ensure compliance with 24 CFR Part 58. In assuming environmental responsibility, the RE must comply with the provisions of NEPA and other environmental laws and authorities. The environmental review process ultimately leads to the submission to the HUD Area ONAP of an environmental certification signed by the Responsible Entity's Certifying Officer.

The environmental review process consists of four phases. Each phase is then broken down into tasks and subtasks. The diagram on the next page shows the four phases and the associated tasks under each phase. Each phase, and its associated tasks and subtasks, are described in more detail in the following subsections, which also include more detailed diagrams showing the break-down of each task into subtasks.

"The environmental review process should begin as soon as a Recipient determines the projected use of HUD assistance." (24 CFR 58.30(b))

The environmental review rarely includes all of the phases depicted below. Depending on the type of activity, the complexity of the project, and the characteristics of the proposed site, the environmental review will probably not require an Environmental Impact Statement (EIS), or even an Environmental Assessment (EA). Even for projects which do require an EA, the format is often very simple because many issues will not be applicable to the activity. The need to develop a complete EIS is **extremely** rare.

NEPA Compliance

The EA and the EIS are the primary vehicles for complying with NEPA. This guidebook will provide general instructions on conducting these.

Statutory Compliance

In addition to, or in lieu of, compliance with NEPA, most HUD-funded activities will require compliance with related laws and authorities and HUD regulations. These compliance activities are discussed in greater detail later in this section. Compliance with laws and authorities encompasses the environmental issues discussed in section III-D. Compliance with these related laws and authorities (summarized in Appendix G) ranges from consideration of the issues as part of the planning process to formal consultation with the relevant authority, obtaining licenses or permits, or developing a mitigation plan. Either the Statutory Worksheet or Regulatory Checklist Guide (Appendix F), depending on the nature of the project, is the primary formats for documenting compliance with related laws and authorities.

Phase I: Evaluate the Project	Phase II: Determining the Level of Environmental Review	Phase III: Conducting the Environmental Assessment	Phase IV: Obtaining Approval and Release of Funds
Tasks 1. Gather Project Information 2. Evaluate Work Scope	**Tasks** 1. Review Exempt Activities 2. Determine Categorical Exclusions 3. Assess Emergencies 4. Complete the ERR	**Tasks** 1. Make EIS Determination 2. Evaluate Project Environment 3. Assess Project Impact 4. Determine Compliance with Related Laws and Authorities 5. Determine Compliance with Other Requirements 6. Make Finding 7. Publish FONSI 8. Publish NOI/RROF 9. Publish FONSI and NOI/RROF Together 10. Conclude the Environmental Assessment 11. Complete the ERR	**Tasks** 1. Submit Certification and RROF 2. Conduct Public Comment Period 3. Take Action on RROF and Certification 4. Approve Release of Funds

Regulatory Compliance

Regulatory compliance consists of additional areas of concern that HUD has identified as critical to the viability of HUD projects. The three areas which must be addressed for all HUD activities are flood hazards, coastal barrier zones, and runway clear zones (24 CFR 58.6) each of which has its own documentation and notification requirements. ERR Guide #2 (Appendix F) provides a format for documenting regulatory compliance.

Lastly, throughout this section, references will be made to Phase 1 Environmental Site Assessments. These references are not to be confused with the four phases of the environmental review process as shown in the previous diagram and described in the following sections. Phase 1 Environmental Site Assessments are specific types of site assessments that focus on the potential presence of hazardous substances. They were created by the American Society of Testing and Materials (ASTM) and have come to be used as industry standard site assessments. For example, many banks, today, require at least a Phase 1 assessment be conducted on a property to screen it for any potential environmental liability before loaning the money to

A Phase 1 Environmental Site Assessment (ASTM E-1527-94) is a preliminary assessment of a property to screen for hazardous materials and is often required by lending institutions.

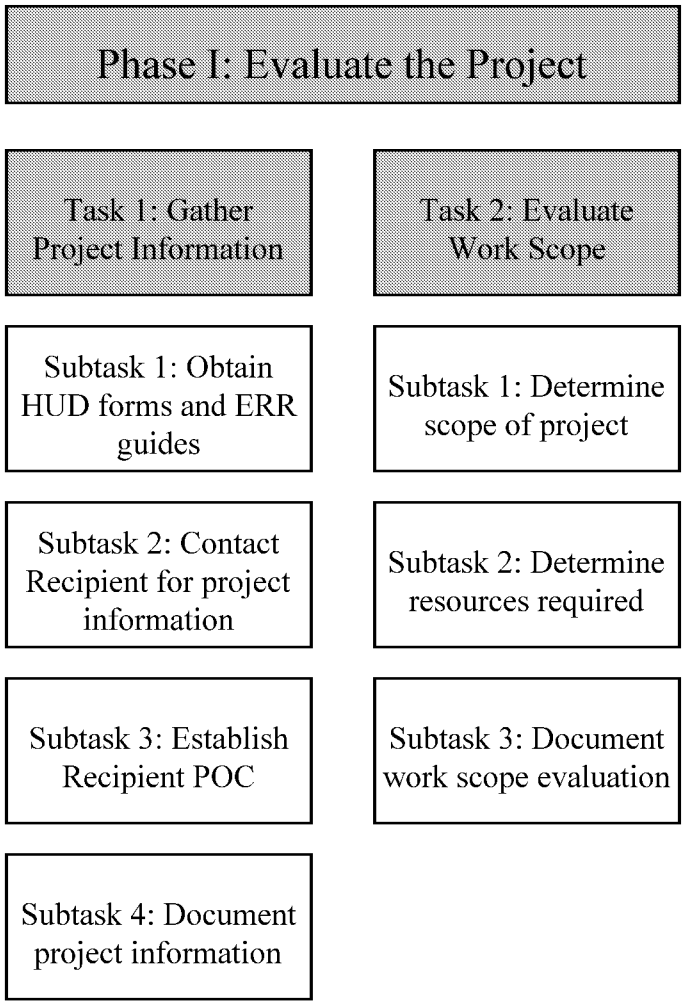
A Phase 1 includes:

- Site historical records review and owner questionnaires
- Visual site inspection of the property
- Written report identifying area for further investigation.

the potential buyer. Phase 1 assessments are described in the box to the left, and fulfill many of the tasks and subtasks of Phase I of the environmental review, described below. However, it is important to note the difference, because a Phase 1 assessment does not fulfill all required compliance tasks of the environmental review.

5.2.1 Phase I: Evaluate the Project (24 CFR Part 58.32)

The first phase in the environmental review process is the evaluation of the project. This phase is concerned with gathering information and documentation regarding the project and the project site. It consists of two tasks and each task, in turn, consists of several subtasks, as the following diagram shows. These subtasks are intended as suggestions towards completing the task. If these subtasks are correctly followed and the guidance forms are used effectively, the level of effort required to complete the review should be minimized while satisfying all requirements. The following sections provide more detail on each task and subtask in Phase I.



Task 1: Gather Project Information

Subtask 1: Obtain HUD forms and ERR guides

Subtask 2: Contact Recipient for project information

Subtask 3: Establish Recipient POC

Subtask 4: Document project information

5.2.1.1 Task 1: Gather Project Information

The first task in evaluating the project is to gather project information:

- What is the project?
- What does the project environment look like?

The Responsible Entity needs to collect the following information regarding the project and the project site:

- Type of activity being undertaken
- How large and complex a project is
- What resources will be required to complete the review
- Whether it is part of a larger grouping of activities whose effects should be evaluated together

Significant information about the project may have already been collected by the Recipient. The Responsible Entity should first seek this information from the Recipient to reduce the amount of unnecessary or duplicative work. This task will also help establish the relationship between the RE and the Recipient.

The RE might only have a brief description of the project at the start of the review. It will need to establish a solid relationship with the Recipient and obtain all of the necessary information. The Recipient is required by law to provide any information requested by the Responsible Entity if that information is available. The Responsible Entity can use the following subtasks to effectively gather the project information:

Subtask 1: The Responsible Entity obtains HUD forms and ERR Guides: At the start of the Review, the Responsible Entity should obtain copies of all required HUD forms. These forms are provided in Appendix F and will also be available at the local HUD office. In addition this guidebook provides ERR Guides to assist in documentation.

Subtask 2: The Responsible Entity contacts the Recipient to get project information: The Recipient may have already compiled detailed information about the project and the project site for the initial proposal. The RE may find this information sufficient. In most cases, however, the RE will need to obtain additional information, particularly regarding the project site, that the Recipient is unable to provide. The RE will also need to collect information regarding issues such as radon, air quality, nearby hazardous operations, lead-

based paint, etc. The ONAP area office may be able to guide the RE to local sources of that information.

Point of Contact

Subtask 3: Establish Recipient Point of Contact: An important outcome of this task is the establishment of a formal Recipient Point of Contact (POC). This is a specific person who represents the Recipient for all environmental review issues. If it is necessary to contact the Recipient, the RE will call the Recipient POC. Conversely, a single staff member should also serve as the POC for the RE. The POC will handle all inquiries from the Recipient, the ONAP area Office, or outside parties regarding the status of the environmental review.

Subtask 4: Document project information: In Appendix F, you will find a copy of ERR Guide #7: *Project Evaluation Guide*. This guide provides a template for gathering project information. This guide, or a similar form, should be completed at the end of this task and included as part of the Environmental Review Record.

The following pieces of information will be required in most cases:

- Type of activity (demolition, construction, rehab, etc.)
- Site location
- Current use of the site
- Existing structures (age and condition)
- Number of units created, demolished, or affected by the
- activity
- Anticipated duration of activity
- Intended use of the site

Task 2: Evaluate Work Scope

Subtask 1: Determine scope of project

Subtask 2: Determine resources required

Subtask 3: Document work scope evaluation

Under "Point-of-Contact" the RE should enter the name, phone number, and the title of the Recipient POC. HUD managers should also be aware of the Recipient POC.

5.2.1.2 Task 2: Evaluate Work Scope

The next task is to evaluate the work scope:

- How much time and effort will the environmental review require?
- What is most likely outcome of the Review?

This evaluation is an important step in conducting the review in a timely and cost effective fashion. The RE should analyze the overall extent of the

project activity and its potential relationship to other projects to aid the Recipient, ONAP, and other RE responsibilities in planning.

Subtask 1: The Responsible Entity determines the scope of the project: The RE should group together and evaluate all project activities under its responsibility that are related on a geographical and /or functional basis (58.32), regardless of funding source. The purpose of classifying this information is to group together related activities so that the Responsible Entity can:

Geographic aggregation should be used to evaluate activities that are functionally different but related that are to be carried out within a limited geographical area.

- Analyze the separate and combined impacts of activities that are similar, or dependent upon other activities and actions [see 40 CFR 1508.25(a)]
- Consider all alternative courses of action
- Schedule activities in order to resolve conflicts or mitigate the individual, combined and/or cumulative effects
- Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities

Functional aggregation can be used when a specific type of activity is to be done in separate locales or jurisdictions under one or more projects or programs.

Based on this evaluation, the RE will group the project or projects into an appropriate unit for the environmental review. This grouping can be based on the functional and/or geographical relationships between the projects. This unit of one or more project activities will be referred to as the project from this point forward.

Environmental Review Planning

Subtask 2: The Responsible Entity determines the resources required: The RE should plan the allocation of time and staff members to the environmental review as early as possible. Given the capabilities and allowing for further information gathering, contact with outside parties, official comment periods, and internal review, the RE can provide the Recipient and ONAP with an approximate target date for completion of the review as well as intermediate target dates for completion of key tasks within the process. This type of planning will enable both ONAP and the Recipient to make the appropriate personnel available to perform the tasks for which ONAP or the Recipient are responsible. This can help identify and avoid potential bottlenecks and conflicts that would delay the process.

Subtask 3: Document Work Scope Evaluation: In Appendix F you will find a copy of ERR Guide #8: *Work Scope Evaluation Guide*. This guidance form provides a template for mapping out the resources and time required for the environmental review. This form, or a similar form, should be completed at the end of this task and included as part of the Environmental Review Record.

Note: *Many of the forms in the Appendix are intended as guides. The RE may choose a different format. It is however crucial that the RE keep a written record of its decisions at each step of the process.*

5.2.1.3 Frequently Asked Questions

Question: How does an environmental review conducted for an activity funded under the ICDBG Program differ from that conducted for the IHBG, Title VI and Section 184 programs?

Answer: It does not differ if the Part 58 option is elected. The same compliment of Environmental Responsibilities must be considered; the same environmental laws, authorities and procedures apply. It does differ if the Part 50 option is elected. Under Part 50, HUD retains the environmental review responsibility and therefore takes the lead on conducting the environmental review.

Question: Should ONAP or the Responsible Entity be concerned with approvals requested by the Recipient from other agencies?

Answer: ONAP should attempt to determine whether the Recipient has filed separate requests for Federal approval or assistance with other Federal agencies. Other agencies that are or will be involved should then be contacted, and the environmental review process coordinated, to insure an early and comprehensive analysis of the direct and indirect effects of the proposal and any related actions. ONAP should inform the Recipient that all relevant applications must be filed in order to avoid delays in the process.

Question: How long should the Environmental Review process take to complete?

Answer: For projects where an Environmental Assessment is prepared, the review process, from initiation through comment periods and final approval, should take no more than three months.

When an EIS is required, the process will take longer than when only an EA is required. NEPA regulations encourage an efficient and cooperative approach to streamline the review, eliminate duplicative work, and surface concerns and alternatives early in the process. The CEQ has advised agencies that under the NEPA regulations even large complex projects (2500 or more units) should require only about 12 months for the completion of the entire EIS process.

Question: What are the most appropriate criteria for aggregation?

Answer: The Responsible Entity should use aggregation to evaluate separate activities as a single project. Functional aggregation applies to a specific type of activity that is to be done in separate locales or jurisdictions. The purpose is to group similar activities that will serve the same function, such as water improvements, and will have essentially the same potential impact regardless of the site.

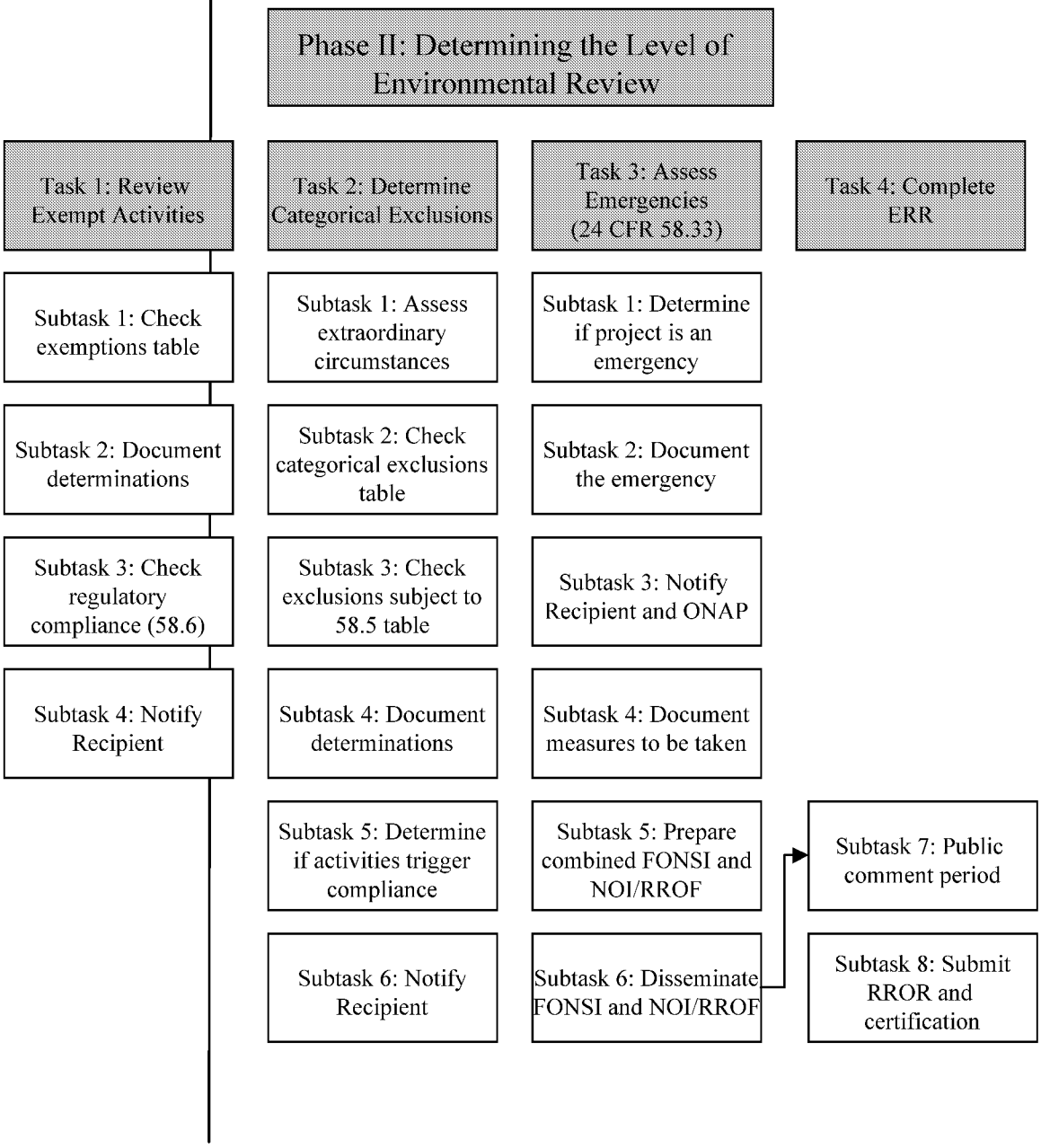
Geographic aggregation should be used to evaluate functionally different but related activities taking place within a limited project area. These activities should be limited to a specific site or to a specific set of similar sites. A combination of these two aggregations can be used to evaluate effectively the impacts resulting from each functional activity and its relationship with the other functional activities.

Question: What is a multi-year project aggregation?

Answer: Multi-year project aggregation is to be used when a project consists of several activities to be implemented over a period of two or more years. The Responsible Entity should consider the relationships between all of the component activities regardless of the source of funding. The environmental review should evaluate the cumulative environmental impacts and estimate the duration and scope and total cost of the aggregated activities. The duration, scope and total cost should also be described in the RROF. The Release of Funds will serve for the entire project period.

5.2.2 Phase II: Determining the Level of Environmental Review

Phase II of the environmental review process consists of tasks that help determine the level of environmental review that is necessary for the specific project. There are four tasks, each with a number of subtasks associated with them. The following diagrams shows the tasks and subtasks in Phase II, and the following sections describe each task and subtask.



Classifying the Project Checklist:

- Assess emergency status of project
- Cross check activities against Exemption Checklist
- Cross check activities against Categorically Excluded checklist
- Assess Statutory compliance (if applicable)
- Assess Regulatory compliance
- Document findings in ERR
- Notify Recipient and HUD

In this phase, the RE will determine whether the project activity falls into one of these categories:

1. Exempt
2. Categorically excluded
   a. Not subject to Part 58.5
   b. Subject to Part 58.5
   c. Converts to exempt
3. Requiring in-depth review (either EA or EIS)
4. Emergency activity

If the project is not an emergency, the RE must look at the type of activity in question and determine if the activity can be classified as exempt or categorically excluded from NEPA regulations. Keep in mind that the checklists provided are not exhaustive. You may need guidance from ONAP if the activity is not actually listed but seems to be a similar type of activity as those listed. If the project is found to be category 1 or 2 (exempt or categorically excluded, above), no Environmental Assessment is needed. If this is the case, the RE should proceed to document this determination in the Environmental Review Record (ERR):

- The RE should ensure that the ERR clearly documents compliance with applicable statutes and provisions.
- The review will end with the completion of the ERR documenting this phase. No further environmental review action will be taken.

The RE should then notify both ONAP and the Recipient of the outcome of this part of the process.

If the project is an emergency, exempt, or categorically excluded, an Environmental Assessment will not be required except in exceptional circumstances. NEPA-related statutes and other HUD provisions may still apply to the activity, particularly if the activity is categorically excluded.

If the project is found to be a category 3 (requiring an in-depth review, above), and not an emergency, not exempt, nor categorically excluded, then the RE can proceed with conducting the Environmental Assessment.

Task 1: Review Exempt Activities

Subtask 1: Check exemptions table

Subtask 2: Document determinations

Subtask 3: Check regulatory compliance (58.6)

Subtask 4: Notify Recipient

5.2.2.1 Task 1: Review Exempt Activities (24 CFR Part 58.34)

If the proposed project is comprised of certain types of activities, the project will be exempt from compliance with NEPA and related laws and authorities. The HUD list of exempt activities (ERR Guide #1, Appendix F) contains general descriptions of activity types. The RE should adequately document this part of the process. Documentation and careful attention to details during this phase will facilitate the compliance process and minimize unnecessary work.

Subtask 1: Check activities against the Exemptions Table: HUD has determined that the activities listed in ERR Guide #1 in Appendix F have no potential for adverse environmental impact. If the project activities are included on the table, the project is exempt from NEPA and related laws and authorities. The project still must comply with HUD regulatory requirements (Part 58.6, discussed in Appendix B) and be fully documented. If the project activities are not in the Exemptions Table, the project is not exempt and the Responsible Entity can proceed directly to Task 2: Determination of Categorical Exclusions. If the project is exempt, the Responsible Entity proceeds to the next subtask.

Where this classification is unclear, the RE should consult the designated Area ONAP Administrator or designated Area ONAP staff for clarification. The Responsible Entity will ultimately be responsible for making the decision.

Under 24 CFR Part 58.34 (10) there are provisions for "imminent threat" to health and safety. This type of activity is exempt from compliance with NEPA and the related laws and authorities.

Subtask 2: Document determination in ERR: For each exempt activity, document the nature of the exemption using ERR Guide #1: *Activity Exemption*. Again, completing these forms is not required, but is intended to provide guidance.

Subtask 3: Check regulatory compliance: Check for compliance with other HUD regulations and address findings in the ERR using ERR Guide #2: *Regulatory Checklist Guide*.

Subtask 4: Notify the Recipient: No further approval is required. The RE should notify the Recipient and ONAP immediately after the project is determined to be exempt. Notification can be by phone or e-mail, but should generally be followed up with written and signed notification. (ERR Guide #1

Task 2: Determine Categorical Exclusions

Subtask 1: Assess extraordinary circumstances

Subtask 2: Check categorical exclusions table

Subtask 3: Check exclusions subject to 58.5 table

Subtask 4: Document determinations

Subtask 5: Determine if activities trigger compliance

Subtask 6: Notify Recipient

Criteria for Extraordinary Circumstances

can be used for this purpose). The Recipient may commit funds for the exempt activities immediately and the use of funds is conditional upon addressing matters identified in the project grant agreement which are not related to environmental review.

5.2.2.2 Task 2: Determine Categorical Exclusions (24 CFR Part 58.35)

Certain categories of activities do not require compliance with NEPA except in extraordinary circumstances. If the proposed project is composed of categorically excluded activities, the project is excluded from compliance with NEPA and possibly from compliance with the related laws and authorities. The RE will determine whether the project activities are excluded and subject to related laws and authorities or excluded and not subject to related laws and authorities. The RE may call on ONAP staff for clarification regarding categorical exclusions. Where activities are categorically excluded from NEPA, an RE must prepare and document findings under the related environmental laws. The RE must also prepare an environmental certification for the Recipient for activities categorically excluded under 58.35(a) which do not convert to exempt.

Subtask 1: Determine if there are extraordinary circumstances: If extraordinary circumstances exist, the Responsible Entity should proceed directly to the environmental assessment (see the next section: Phase III: Conducting the Environmental Assessment). The following activities constitute extraordinary circumstances as defined in 24 CFR Part 58.2(3). These activities will require compliance with NEPA regardless of exclusions:

- Actions rarely or never carried out by HUD or any other Federal agency
- Actions that are materially similar in size, location, scope, or activity to other actions that have required an EIS
- Actions that will change HUD policy or direction
- Actions occurring where unusual physical conditions exist on the site or in the vicinity which increase the potential for significant impact on the environment or in which the environment could have significant impact on the users of the facility

If extraordinary circumstances do not exist, continue with the rest of this task to make determinations regarding categorical exclusions.

Categorical Exclusion is limited to certain types of activities. No EA, EIS, or FONSI is required for categorically excluded projects, however some activities may still be subject to the related laws and authorities.

Compliance ranges from consideration of an issue as part of the planning process to formal consultation to development of a mitigation plan. Each law or authority may have specific requirements but compliance generally involves documented evidence of the above activities.

If compliance with any of the items in Part 58.5 is required, Certification and RROF must be prepared. If compliance is not required, the project becomes exempt, and no Certification or RROF is required. The RE makes a finding to the ERR in accordance with 58.34(a)(12).

Categorical exclusion is limited to certain types of activities. No EA, EIS, or FONSI is required for categorically excluded projects, however, some activities may still be subject to the related laws and authorities.

Subtask 2: Determine if the project is categorically excluded and not subject to related laws and authorities: Check the project activities against ERR Guide #3: *Categorical Exclusion; Not Subject to 58.5*, located in Appendix F. Activities listed in this table are excluded from the NEPA-mandated requirements and also from compliance with the related laws and authorities (24 CFR Part 58.5). These activities must only comply with the additional HUD regulations (25 CFR Part 58.6). The Responsible Entity should complete the following documentation to show compliance in the ERR:

- ERR Guide #2: *Regulatory Checklist Guide*
- Supporting documentation

Subtask 3: Determine if the project is categorically excluded and subject to related laws and authorities: Check the project activities against the ERR Guide #4: *Categorical Exclusion; Subject to 58.5*, a copy of which is included in Appendix F.

Activities which are listed on this table are considered categorically excluded and are excluded from the NEPA-mandated requirements of an EA, FONSI or EIS. However, they still must comply with the related laws and authorities (24 CFR Part 58.5) and with HUD regulations (25 CFR Part 58.6). If the project's activities are found on this list, the Responsible Entity should complete the following documentation to show compliance in the ERR:

- Statutory Worksheet
- Regulatory Checklist
- Supporting documentation

Subtask 4: Document Determinations: Document the determinations of categorical exclusion in writing in the ERR for each activity. ERR Guide #3: *Categorical Exclusion; Not Subject to 58.5* and ERR Guide #4: *Categorical Exclusion; Subject to 58.5* in Appendix F may be useful.

Subtask 5: Determine if activities trigger the need for compliance: Even if project activities are subject to 24 CFR Part 58.5, compliance is only necessary if any of the statute issues is applicable to the project activity.

- If any statutes are applicable, compliance and mitigation will be required. Complete the Statutory Worksheet and compliance activities including documenting evidence. A Certification and RROF must be prepared (See Section 5.2.3).
- If none of the statutes are applicable to the project activity, no compliance is necessary and no RROF is required.

Subtask 6: Notify the Recipient: The Responsible Entity should notify the Recipient if the project is determined to be excluded, not subject to the related laws and authorities, or converts to exempt. Notification can be by phone or e-mail, but should be followed up with a written and signed notification. The Recipient may immediately commit funds for these activities. However, for excluded activities requiring compliance with one or more of the related laws and authorities, public notification and HUD approval is required.

Task 3: Assess Emergencies (24 CFR 58.33)

Subtask 1: Determine if project is an emergency

Subtask 2: Document the emergency

Subtask 3: Notify Recipient and ONAP

Subtask 4: Document measures to be taken

Subtask 5: Prepare combined FONSI and NOI/RROF

Subtask 6: Disseminate FONSI and NOI/RROF

Subtask 7: Public comment period

Subtask 8: Submit RROR and certification

5.2.2.3 Task 3: Assess Emergencies (24 CFR Part 58.33)

HUD activities rarely constitute emergency action. If the proposed activity is in response to a Federally declared disaster, the Responsible Entity follows the special procedures for emergencies in 24 CFR Part 58.33. In such cases, funds are released more quickly than for a non-emergency activity. The goal during an emergency is to obtain a speedy release of funds and implement the necessary activities.

The special procedures of 24 CFR Part 58.33 pertain primarily to emergency activities undertaken for environmental circumstances in direct response to Federally declared disasters, and may also provide for non-Federally declared disasters provided a waiver from CEQ is obtained. Other activities undertaken to "control or arrest the effects from other disasters or imminent threats" may be exempt as described under 58.34 (a) (10).
The procedures for Federally declared disasters are as follows:

Subtask 1: Determine if the project is an emergency action: If the Responsible Entity determines that the project is an emergency action necessitated by a Federally declared disaster, the Responsible Entity should complete the following subtasks. Otherwise the RE should proceed to make the exemption determination.

Subtask 2: Document the emergency situation: The circumstances of the emergency situation should be documented with details of the project activity's relation to the emergency. Only activities that are immediately

required to mitigate the emergency can be handled under the emergency procedures. ERR Guide #9: *Emergency Determination Guide* (in Appendix F) may be used as guidance for documenting this task.

Subtask 3: Notify ONAP and the Recipient: The Responsible Entity should notify the Recipient and ONAP immediately of the emergency action. Notification can be by phone or e-mail, but should be followed up with a written and signed notification.

Subtask 4: Document the emergency actions: Specify the actions that will be taken in response to the emergency. These actions must directly address the emergency situation.

Subtask 5: Prepare the combined FONSI and NOI/RROF: In addition to the typical requirements of the combined FONSI and NOI/RROF, ensure that the combined Notice states that:

- The funds are needed on an immediate emergency basis due to a Federally-declared disaster
- The public comment periods have been combined
- Commentors are invited to submit their comments to both ONAP and the issuer of the notice (i.e., the Responsible Entity) so that their comments will receive full consideration

The only difference in emergency actions is that the RROF can be submitted at the same time the combined FONSI and NOI/RROF are published.

If the project in question has significant environmental impact, the HUD Environmental Office should be contacted.

Alternate arrangements through the CEQ apply only if an EIS would be required.

Subtask 6: Disseminate the Notice of FONSI and NOI/RROF: The RE shall publish or post the combined Notice of FONSI and NOI/RROF simultaneously with the submission of the RROF. Dissemination of this Notice should be conducted in accord with the procedures outlined later in this section.

The Recipient cannot expend funds received through this RROF until modifications have been made to address public comments.

Subtask 7: Hold public comment period: Concerns about potential impacts or mitigation raised during the public comment period, or identified by the Responsible Entity, must be addressed before the emergency activities receive HUD approval.

Subtask 8: Submit the Request for Release of Funds (RROF): The Recipient is responsible for submitting the RROF to HUD. The Recipient should submit the RROF as soon as emergency status is confirmed.

Task 4: Complete ERR

5.2.2.4 Task 4: Complete the ERR

The Environmental Review Record (ERR) is an important requirement of the environmental review process. Every action undertaken by the Recipient must be documented in an ERR. The Responsible Entity can contact ONAP for guidance regarding appropriate content, format, and maintenance. The ONAP Area Office can also provide the Responsible Entity with previous ERR documents to use as examples when completing their ERR.

All determinations regarding emergencies, exemptions and exclusions must be clearly documented in the Responsible Entity's ERR and in the Recipient's project file. Failure to clearly record these determinations in writing in the ERR provides grounds for objection to the certification and RROF.

The purpose of the Environmental Assessment is to create a brief and concise public document describing the extent of environmental impact.

Conduct the Environmental Assessment Checklist:

- Determine if EIS is automatic
- Prepare EA
- Assess statutory compliance
- Assess regulatory compliance
- Make finding
- Publish FONSI and NOI/RROF
- Complete ERR

When the responsible entity completes the EA, it shall make one of two findings:

- No Significant Impact (FONSI), or
- Significant Impact

Outputs:

- Environmental Assessment
- Determination to file Environmental Impact Statement
- Environmental Review Record
- FONSI Publication
- NOI/RROF Publication

5.2.3 Phase III: Conducting the Environmental Assessment

At this stage the project has been determined not to be exempt, or categorically excluded. An Environmental Assessment or possibly an EIS is required. If the Responsible Entity has determined that an EA is required, the tasks and subtasks of Phase III will guide the RE through the EA process. Overall, the EA should accomplish the following:

- Identify all potential environmental impacts of the project
- Provide sufficient evidence and analysis for determining whether to prepare an EIS
- Identify better alternatives and mitigation measures to aid an agency's compliance with NEPA when no EIS is necessary
- Facilitate preparation of an EIS when one is necessary
- Make a Finding of No Significant Impact (FONSI) or a finding of significant impact

The graphic on the following pages shows the tasks and suggested subtasks for completing the Environmental Assessment (EA). The first task is to determine if an EIS is automatically required based upon the circumstances of the project. If it is evident without preparing an EA that an EIS is required under 24 CFR Part 58.37, the Responsibility Entity should proceed directly to the EIS (see Appendix F for details). If an EIS is not automatically required, the next tasks are to complete the EA and confirm compliance with all applicable statutory and regulatory requirements. Convenient check-lists and ERR Guides will assist the Responsible Entity in doing this. These tasks are intended to support the determination of either:

- A Finding of No Significant Impact (FONSI)
- A finding of significant impact

If a finding of significant impact is made, an EIS will most likely be required. However, the Responsible Entity should complete the EA fully and contact the Area ONAP before proceeding with an EIS. A FONSI will require publishing the FONSI and, concurrently or shortly thereafter, publication of the Notice of Intent to Request Release of Funds (NOI/RROF).

Finally, all the documents collected or produced during the review process are put into one file, the Environmental Review Record (ERR). With its completion, the Responsible Entity signs the environmental certification and the Recipient requests the release of funds from HUD for the project.

Phase III: Conducting the Environmental Assessment

Task 1: Make EIS Determinations	Task 2: Evaluate Project Environment	Task 3: Assess Project Impact	Task 4: Determine Compliance with Related Statutes
Subtask 1: Check criteria for required EIS	Subtask 1: Determine existing conditions	Subtask 1: Identify all environmental impacts	Subtask 1: Consult databases
Subtask 2: Assess expected impact	Subtask 2: Describe character resources of area	Subtask 2: Determine extent of impacts	Subtask 2: Consult other sources
	Subtask 3: Identify pre-existing trends	Subtask 3: Examine, recommend mitigation	Subtask 3: Contact relevant authorities
	Subtask 4: Identify conditions that will change	Subtask 4: Examine practical alternatives	Subtask 4: Complete statutory worksheet to determine compliance
		Subtask 5: Complete EA format	

Phase III: Conducting the Environmental Assessment (Continued)

Task 5: Determine compliance with other requirements	Task 6: Make Finding	Task 7: Publish FONSI	Task 8: Publish NOI/RROF
Subtask 1: Ensure flood insurance compliance	Subtask 1: Determine if project will have significant impact	Subtask 1: Plan FONSI public comment period	Subtask 1: Plan NOI/RROF public comment period
Subtask 2: Comply with coastal barrier resources prohibition	Subtask 2: Contact ONAP Administrator	Subtask 2: Prepare FONSI	Subtask 2: Prepare NOI/RROF
Subtask 3: Notify Recipient of runway clear zone status		Subtask 3: Publish Notice of FONSI	Subtask 3: Publish NOI/RROF (and FONSI, if not already)
Subtask 4: Notify Recipient			

Phase III: Conducting the Environmental Assessment (Continued)

Task 9: Publish Notice of FONSI and NOI/RROF Together	Task 10: Conclude the Environmental Assessment	Task 11: Complete ERR
Subtask 1: Plan public comment period	Subtask 1: Conduct public comment period	Subtask 1: Collect checklists and documents
Subtask 2: Prepare FONSI	Subtask 2: Consider comments	Subtask 2: Describe project activities
Subtask 3: Prepare NOI/RROF	Subtask 3: Re-eval. Of environmental assessments	Subtask 3: Evaluate the project
Subtask 4: Make inclusions for combined notice	Subtask 4: Notify Recipient	Subtask 4: Document compliance
Subtask 5: Publish combined notice		Subtask 5: Record findings
		Subtask 6: Submit copy to Recipient

Task 1: Make EIS Determinations

Subtask 1: Check criteria for required EIS

Subtask 2: Assess expected impact

Criteria for automatic EIS

The comment period on the FONSI is 30 days when an EA is done on a project which exceeds the EIS thresholds. (24 CFR 28.45)

5.2.3.1 Task 1: Make EIS Determinations (24 CFR Part 58.37)

The Responsible Entity must first check to determine if an EIS is automatically required. If so, the Environmental Assessment can be by-passed and the EIS initiated immediately. The purpose of this task is to identify specific characteristics of the project that will necessitate preparation of an EIS. Using this as a tool, the Responsible Entity can avoid spending resources on the preparation of the EA or postponing initiation of the EIS for projects that will require it based on the circumstances of the project. However, if the Responsible Entity thinks that the project's impact would not warrant an EIS, the Responsibility Entity may proceed with an EA first.

Subtask 1: Check criteria for required EIS: The Responsible Entity should proceed directly to the preparation of an EIS if any of the following is true:

- The project has obvious potential for significant impact on the human environment
- The project will result in either sites for, or the construction of, hospitals or nursing homes containing 2500 or more beds
- The project will significantly affect (through demolition, conversion, or rehabilitation activities not already excluded) 2500 or more existing housing units
- The project will construct or install 2500 or more housing units
- The project will provide enough additional water and sewer capacity to support 2500 additional housing units

Subtask 2: Assess expected impact: Even if an EIS is automatically required, the Responsible Entity may decide to complete the EA first. It can make this determination if:

- There is no apparent impact on the human environment
- The only reason for an EIS is the cutoff thresholds in the list above

If the Responsible Entity proceeds with an EA and makes a finding of no significant impact at the conclusion of the EA, the FONSI must be made available to the public for at least 30 days before the Recipient submits the request for release of funds to HUD.

Methods of Investigation:

1. Records Review
2. Site Visit
3. Interview/Consultation

Task 2: Evaluate Project Environment

Subtask 1: Determine existing conditions

Subtask 2: Describe character resources of area

Subtask 3: Identify pre-existing trends

Subtask 4: Identify conditions that will change

5.2.3.2 Task 2: Evaluate Project Environment (24 CFR Part 58.40)

The first part of the Environmental Assessment is to gather information and make a comprehensive description of the project site's physical environment. Keep in mind that this portion of the EA process is intended to be done in a relatively short period of time. This portion of the EA process is comprised of a records review, a site visit, and agency consultation (See 5.2.3.4, Subtask 3 for more information on agency consultation).

The Responsible Entity should use these investigative approaches to complete the following subtasks to proceed through the requirements for preparing an Environmental Assessment.

Subtask 1: Determine existing conditions at the proposed site: To identify the existing environmental conditions of the site, the RE should visit the site, review databases and records, and contact relevant authorities (e.g. local, state, and Federal agencies that may have relevant information about the site and/or regulatory jurisdiction).

Subtask 2: Describe the character, features, and resources in the project area: Use physical setting sources such as geologic maps, soil conservation maps, and groundwater maps as well as personal site inspection to describe the physical properties of the project area. In addition, the proximity of community facilities and services such as commercial, educational, and medical facilities and public safety and transportation should be determined through an examination of maps, physical inspection of the area, and interviews with the local community management.

Subtask 3: Identify pre-existing trends which will continue without the project: Use any of the above techniques to identify current trends, both positive and negative, which will continue if the project is not implemented at the site. If possible, identify the likely outcome of any continuing trend.

Subtask 4: Identify conditions that will change if the project is executed: Based on existing conditions, determine the effect of the project on those conditions. Implementation of the project may arrest certain negative conditions or the project may exacerbate others.

Task 3: Assess Project Impact

Subtask 1: Identify all environmental impacts

Subtask 2: Determine extent of impacts

Subtask 3: Examine, recommend mitigation

Subtask 4: Examine practical alternatives

Subtask 5: Complete EA form

Tools for Conducting the Environmental Assessment:

- HUD Notice 79-33 Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials
- Siting HUD-Assisted Projects Near Hazardous Facilities
- The Noise Guidebook
- ASTM Standard E 1528-96 Standard Practice for Environmental Site Assessments: Transaction Screen Process
- ASTM Standard E 1527: A Phase I Environmental Site Assessment

5.2.3.3 Task 3: Assess Project Impact (24 CFR Part 58.40)

Based on the project's environment, certain conclusions can be drawn concerning the potential environmental impacts. An impact is defined as any alteration of existing environmental conditions or creation of new environmental conditions, adverse or beneficial, induced wholly or partially by a proposed project.

Subtask 1: Identify all potential environmental impacts, adverse and beneficial: All potential impacts upon the human environment, which includes the natural and physical environment and the relationship of people with that environment, must be documented.

Subtask 2: Determine extent of impacts on the environment: Analyze and evaluate all impacts to determine the extent of their effects on the human environment.

Subtask 3: Examine and recommend mitigating measures: Examine and recommend ways in which either the project or external factors could be modified to mitigate adverse environmental impacts. Mitigation measures include:

- Avoiding the impact by not taking certain actions
- Minimizing the impact by modifying the extent of an action
- Rectifying the impact by repairing or restoring the affected environment

Subtask 4: Examine alternatives: Examine and discuss practical alternatives to the project. Alternatives should include:

- No action
- Preferred action
- Variations of the project type for the site
- Variations on the size or location of the project

Subtask 5: Complete an EA Format: Use the HUD-recommended format in Appendix F. Complete the EA checklist, comment where applicable and attach succinct documentation supporting the assessment. Keep comments and discussion brief and to the point.

5.2.3.4 Task 4: Determine Compliance with Related Laws and Authorities (24 CFR Part 58.5)

Task 4: Determine Compliance with Related Statutes

Subtask 1: Consult databases

Subtask 2: Consult other sources

Subtask 3: Contact relevant authorities

Subtask 4: Complete statutory worksheet to determine compliance

Compliance with related laws and authorities may require some investigation and consultation with agencies having regulatory jurisdiction. The diagrams on the following pages show the related laws and authorities that EA level projects must comply with in addition to NEPA. These laws and authorities are listed in 24 CFR Part 58.5. Applicability of these laws and authorities can usually be determined by checking various public sources of information. If the initial investigations indicate that the proposed action could have adverse affects and would trigger the need for compliance with related laws and authorities and the possible need for mitigating actions, the Responsible Entity should contact the relevant authorities and initiate a cooperative assessment of the issue. For further guidance on compliance with these related laws and authorities, see Appendix F.8, Other Tools, which contains *Principles for Compliance and Review Process: Environmental Laws and Authorities Cited in 24 CFR 58.5*. In addition, for guidance on documenting compliance (e.g., field observation, personal contact, printed materials, reviewer's experience, special study, and consultation with oversight agencies), see Appendix F.8, which contains *Supplemental Guide on Environmental Review Documentation.*

Subtask 1: Consult databases: For all issues not obviously inapplicable, the Responsible Entity should first consult existing databases to get a preliminary assessment of the site's status relative to these issues. Other local databases may also exist.

Subtask 2: Consult other sources: The local library, the government records office, and regional agency offices may have additional maps and reports that provide valuable information about the site area.

Subtask 3: Contact relevant authorities: The Responsible Entity should make contact with the local or regional office of the designated authority for each law and authority still in question after initial investigation. Appendix I lists web sites where additional contact information can be found. A phone call can be used to make preliminary contact or to set up a site visit.

Contact Information

The RE may also have to negotiate mitigation activities to satisfy compliance with the relevant authority. The RE should provide the authority contact with a brief description of the project – its purpose, scope, and duration – as well as the exact location of the site in question and any further material that may be needed. The authority may require a guided tour of the site in order to make an assessment.

The RE will negotiate with the relevant authority when compliance with a law or authority is required.

Interagency cooperation guidelines

The relevant authorities may not be on the same schedule as the Responsible Entity. The following guidelines may help in interagency cooperation:

- Bring concerned agencies into the process as early as possible to ensure a timely response
- Try to establish a good relationship with authorities who will be called upon again in the future
- Request a documented decision from the authority regarding the project's compliance with a particular statute
- Understand that the authorized letter and any supporting documentation from the authority will become part of the Environmental Review Record

Subtask 4: Complete EA Statutory Checklist to determine compliance: Use the information compiled in the preceding subtasks to complete the Statutory Worksheet (ERR Guide # 5). The supporting documentation related to the checklist should be included in the ERR.

Historic Preservation

Determine compliance with National Historic Preservation Act (NHPA): The protection of historic properties involves addressing, and minimizing to the extent possible, the adverse effects of Federally-funded projects on the character or use of historic properties. The requirements for compliance with historic preservation under Section 106 of the National Historic Preservation Act of 1966 are set forth in 36 CFR Part 800.

The RE has the responsibility to determine whether the activity could result in changes to the character or use of a property which is listed in or is eligible for inclusion in the National Register of Historic Places. If the answer is yes, then the Responsible Entity should:

- Check the National Register of Historic Places to determine if the project site or other sites in the vicinity are listed. The National Park Service (NPS) web site (www.cr.nps.gov/nr/) contains the list of properties on the National Register of Historic Places.
- Make determination of eligibility
- Apply, as applicable, the Criteria of Effect for historic properties

SHPO

- Consult the State Historic Preservation Officer (SHPO) or Department of the Interior (DOI) approved Tribal Historical Preservation Officer (THPO) with details of the project and project site. The SHPO or THPO has 30 days to reply or make a default finding of no effect
- Agree on finding of no adverse effect or draft a Memorandum of Agreement (MOA) detailing mitigation measures

- Contact the Advisory Council on Historic Preservation (ACHP) with finding or MOA and allow for comment

The ACHP website (www.achp.gov) contains a complete list of SHPOs and THPOs with names, addresses, phone numbers and, where available, state historic preservation web pages.

Floodplain Management

Floodplain and wetlands management are under the jurisdiction of the U.S. Army Corps of Engineers, Federal Emergency Management Association (FEMA), and U.S. Fish and Wildlife Service (USFWS). Floodplain and wetland maps can be obtained through FEMA and the USFWS.

Determine Compliance with floodplain management and wetlands protection authorities: Executive Order 11988 on Floodplain Management discourages Federal support of floodplain development. Compliance with this Order requires Federally funded activities to take measures to avoid adverse impacts associated with the occupancy and modifications of floodplains. The requirements for HUD compliance with this Order are located in 24 CFR Part 55.

Executive Order 11990 on the Protection of Wetlands discourages Federally assisted construction in wetlands. The purpose of this Order is to avoid the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.

The Responsible Entity should consult the regulations and, if necessary, the relevant authorities to ensure compliance if the proposed project site is located in a 100-year floodplain or involves wetlands. A project proposed for construction in a floodplain must demonstrate that there is no reasonable alternative to the floodplain location. Compliance with both Orders can be accomplished through an eight-step decision making process:

- Determine if the proposed action is located in the floodplain or wetlands
- Post early public notice
- Identify and evaluate alternatives
- Identify adverse impacts of the action on the floodplain or wetlands
- Identify methods to mitigate the adverse impacts
- Re-evaluate the proposed action with the addition of mitigation activities
- Post Final public notice
- Implement

Coastal Zones

Determine compliance with the Coastal Zone Management Act of 1972: Under the Coastal Zone Management Act, any ONAP activity proposed for a coastal area covered by a coastal zone management plan must be compatible with the management plan. The Coastal Barrier Resource Act prohibits any

ONAP activity that encourages construction or development of an undeveloped coastal barrier.

- The RE should consult the State Coastal Zone Management Plan for any activities proposed for a coastal area to ensure compliance with this regulation. For information on the state coastal zone management programs, including contact information, see the website of the Office of Ocean and Coastal Resources Management, National Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce (www.ocrm.nos.noaa.gov/czm/czmsitelist.html).
- The RE should also certify that the project is consistent with this plan. When this is accomplished, the RE should send the state a copy of this certification, along with all supporting documentation. Finally, the RE should receive concurrence from the state on its certification.

Sole Source Aquifers

Determine compliance with sole source aquifers laws: ONAP activities that might contaminate an Environmental Protection Agency (EPA)-designated, sole source aquifer are prohibited under the Safe Drinking Water Act of 1974. A sole source aquifer is one that provides the only source of drinking water for a community. The regulations governing the implementation of this Act are at 40 CFR Part 149.

- The RE should consult the regional office of the EPA if the proposed site involves an aquifer, although designation of sole source aquifers is rare. For a map of sole source aquifers, see the EPA's website (www.epa.gov/OGWDW/swp/sumssa.html).
- If the project site involves a sole source aquifer, the RE should consider if the project has the potential to contaminate this aquifer.

Endangered Species

Determine compliance with the Endangered Species Act of 1973: The Endangered Species Act mandates that Federally-assisted activities not jeopardize listed species or their habitat. The RE must ensure that ONAP activities that are proposed for areas harboring listed species must avoid modifying or destroying their habitat. The Endangered Species Act is administered by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). NMFS is responsible for most threatened and endangered marine species and USFWS is responsible for all other threatened and endangered plants and animals. USFWS should be contacted as soon as the RE determines that an Environmental Assessment is required. USFWS will indicate whether NMFS should be contacted (e.g. when a project is located near a river containing threatened and endangered species).

- The RE should determine whether the project site contains natural habitat. If it does, the RE should determine whether the proposed action would adversely affect a federally listed or proposed threatened or endangered species or destroy or adversely modify designated or proposed critical habitat.
- The finding should be based on contact (informal consultation) with USFWS or NMSF.
- If USFWS or NMFS believes the site is a habitat for an endangered species, a biological assessment is made to determine if the species is present.
- If the species is present at the site, an Endangered Species Act Section 7 consultation (formal consultation) must be done. USFWS will also respond if the site includes any designated wetlands.
- The Section 7 consultation can be a lengthy process, which may include all or part of the following steps - informal consultation, biological assessment, early consultation, formal consultation, resolution conference, and biological opinion.

Wild and Scenic Rivers

Determine compliance with the Wild and Scenic Rivers Act of 1968: Any ONAP activities which might affect rivers included in the Nationwide Inventory must preserve the rivers designation under the Wild and Scenic Rivers Act of 1968.

- The RE should consult with the NPS for any activities occurring near a river to determine if the river is included in the Inventory and whether the activity would adversely impact the river's designation. The NPS website (www.nps.gov/rivers/wildriverslist.html) contains maps and descriptions of rivers designated as Wild and Scenic.

Clean Air Act

Determine compliance with the Clean Air Act of 1978: The Clean Air Act pertains to activities that will lead to an increase in air pollution or activities that will expose humans to increased air pollution. Clean air regulations also pertain to asbestos removal above a threshold amount from multi-family and non-residential buildings. The regulations at 40 CFR Part 6, 40 CFR Part 51, and 40 CFR Part 93 set forth the procedures for conforming to air quality standards.

- The RE should determine if the proposed project is located in a geographic area that is in *attainment* or *nonattainment* with the National Ambient Air Quality Standards. If the proposed project is in a

nonattainment area, the RE should consult with the EPA and State and local agencies if air quality might be an issue. Screening to determine if proposed sites have unacceptable ambient air quality will be most relevant for ONAP activities.

- For more information concerning the Clean Air Act and tribes, see EPA's American Indian Environmental Office at http://www.epa.gov/indian/. Another resource which may be of use is EPA's TribalAir website, at http://www.epa.gov/oar/tribal/airprogs/regplanorg.html.

Farmlands Protection

Determine compliance with farmlands protection laws: The Farmland Protection Policy Act of 1981 together with the U.S. Department of Agriculture's (USDA's) Farmland Protection Policy discourages Federal activities that would convert farmland to nonagricultural purposes. The regulations at 7 CFR Part 658 implement this policy for Federal activities.

- If the proposed activity would occur in any type of agricultural area, the RE should consult an inventory map to determine if the site is classified as prime, unique, statewide, or locally important farmland. These inventory maps are available on a county level through the USDA Natural Resources Conservation Service (NRCS). The NRCS website (www.nrcs.usda.gov/NRCstate.html) has contact information for the closest NRCS office.
- If the site falls into any of these categories, the Responsible Entity should contact the NRCS District Conservationist and request an evaluation of land type from the NRCS using Form AD-1006.

Environmental Justice:

"...no person or groups of people should shoulder a disproportionate share of the negative environmental impacts resulting from the execution of this country's domestic and foreign policy programs."
Presidential Executive Order 12898 on Environmental Justice

Determine compliance with Executive Order 12898 (Environmental Justice): In accordance with this Order, HUD has created its own policy for addressing environmental justice as part of the environmental review of HUD projects. The RE should consider avoidance or mitigation of negative environmental impacts particularly in the following cases:

- If the site or surrounding neighborhood suffers from disproportionate adverse environmental effects relative to the community at large
- If the project activity is in or is close to a predominately low income or minority neighborhood
- If the project activity would employ or serve a predominately low income or minority population

Identify all environmental impacts

All negative environmental impacts should be identified. The RE should address whether the activities create a negative environmental impact or

aggravate an existing negative environmental impact on a resident low income or minority population. Aggravating an existing impact includes:

- Worsening the source of the impact
- Moving people closer to the impact
- Exposing more people to the impact

Compliance with the Presidential Executive Order on Environmental Justice is often required for all HUD projects, even if those projects are exempt or categorically excluded. Situations where an exempt or excluded project must still comply with the environmental justice element include:

- The activities involve new housing construction or acquisition for use by low income or minority residents
- The activities are to take place in a low income or minority neighborhood
- The activities would occur in a primarily non-residential neighborhood

The ERR must show that the environmental justice issue was considered and that mitigation efforts have been considered and implemented into the proposal if practicable.

Determine compliance with other environmental regulations: The RE should ensure conformance to applicable criteria and standards detailed in 24 CFR Part 51 other than for runaway clear zones and clear zones. These include:

- **Noise abatement and control.** The RE must determine if the proposed activity is a noise sensitive land development activity. The RE should specifically consider the development's proximity to a major roadway, railroad, military airfield, or civilian airport.
- **Standards for the siting of HUD-assisted projects near flammable or explosive hazards.** The purpose of this regulation is to ensure that there is an acceptable separation distance between people and buildings from stationary aboveground storage tanks more than 100 gallons in size and that contain materials that are explosive or flammable in nature.
- **Toxic chemicals and radioactive materials.** The RE should determine if the project site is contaminated with hazardous substances and radioactive materials, and should also determine if there is a pathway for human exposure to these materials (e.g. surface water, ground water, soil, and air). Finally, the RE should determine if mitigation is required.
- **Airport Clear Zones and Accident Potential Zones.** The RE should determine if the project is within an FAA-designated civilian airport Runway Clear Zone, or Runway Protection Zone, or within a military

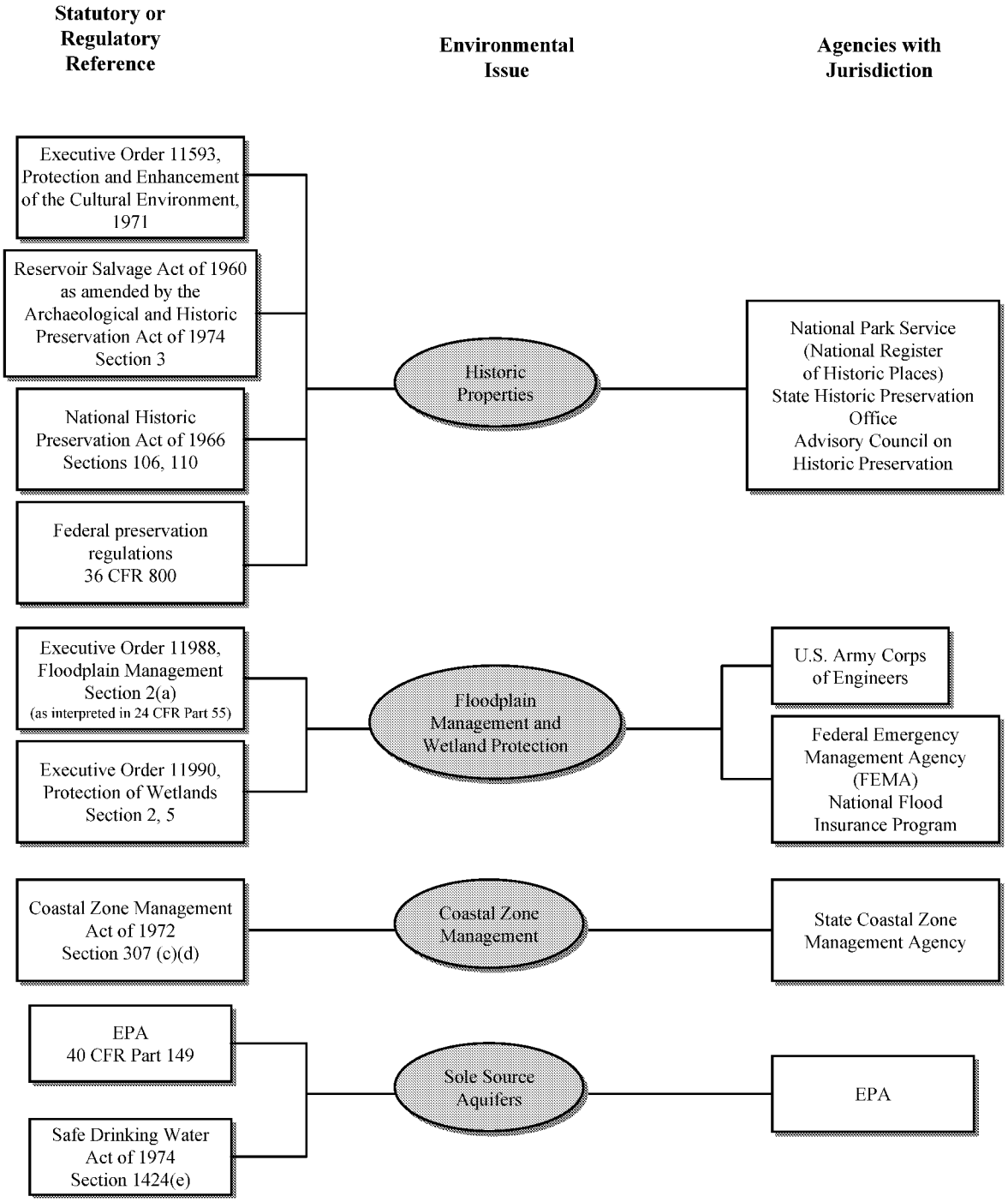
Tools for Determining Compliance:

- Statutory Checklist
- Principles for Compliance and Review Process: Environmental Laws and Authorities Cited in 24 CFR 58.5
- Sample letters to related authorities showing style and level of detail to be used by the Responsible Entity when making these inquiries.
- Web pages for additional information.
- The local offices of the authorities.

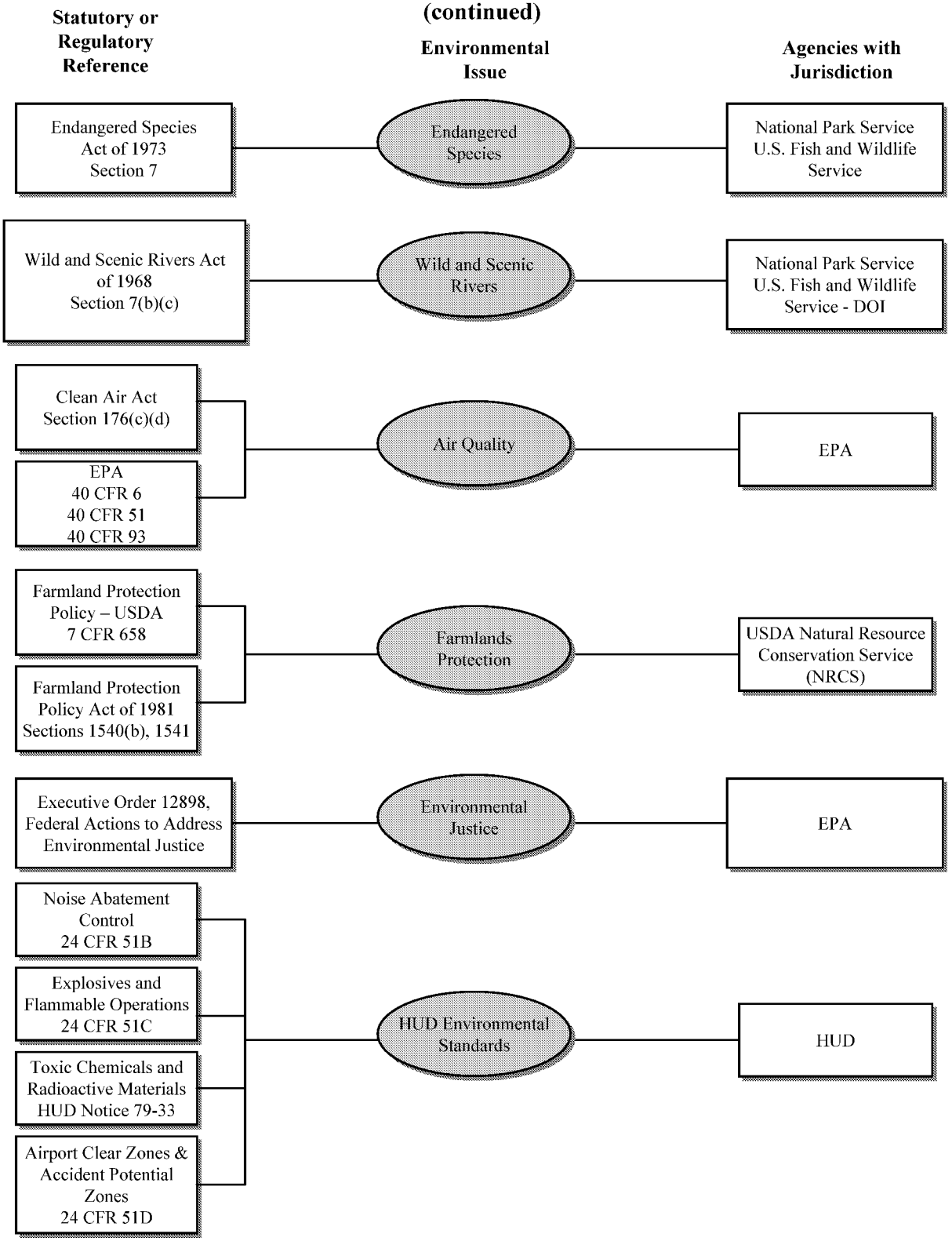
airfield Clear zone or Accident Potential Zone – Approach Protection Zone.

The following graphic summarizes the environmental issues, their regulatory references(s), and the agency or department responsible for compliance.

24 CFR Part 58.5



24 CFR Part 58.5 (continued)



Task 5: Determine compliance with other requirements

Subtask 1: Ensure flood insurance compliance

Subtask 2: Comply with coastal barrier resources prohibition

Subtask 3: Notify Recipient of runway clear zone status

Subtask 4: Notify Recipient

Other requirements address development in:

- Flood hazards zones
- Coastal barrier resources
- Runway clear zones or clear zones

5.2.3.5 Task 5: Determine Compliance with Other Requirements (24 CFR Part 58.6)

In addition to NEPA and NEPA-related laws and authorities, HUD projects are restricted by certain other constraints. These restrictions are listed in 24 CFR Part 58.6. Activities which may be excluded or exempt from NEPA and the other laws and authorities are still bound by these constraints. The Responsible Entity must address these issues in the ERR and assure their compliance where applicable. Use ERR Guide #2: *Regulatory Checklist Guide*, (Appendix F) for documenting compliance.

Subtask 1: Ensure flood hazard compliance: Federal funds cannot be used for acquisition, rehabilitation, construction, or related activities in any area identified by the Federal Emergency Management Agency as having special flood hazards unless the following criteria are met:

- The community in the designated area participates in the National Flood Insurance Program, or the area has been designated as having special hazards for less than one year
- The approval of financial assistance to the Recipient is conditional upon the property owner obtaining flood insurance.

The Responsible Entity must make sure that the Recipient obtains and maintains flood insurance coverage.

Subtask 2: Comply with Coastal Barrier Resource Prohibition: HUD-provided funds may not be used for most activities that would take place within the Coastal Barrier Resources System.

Subtask 3: Make official notification regarding Runway Clear Zones: The Responsible Entity must inform the buyer in all projects involving the purchase or sale of property which is in a runway clear zone or clear zone. The Responsible Entity must obtain a signed statement from the buyer acknowledging that the buyer is aware of the implications of being in a clear zone, including the possibility that the property may later be acquired by the airport. See 24 CFR Part 51 for more detailed information about HUD's policy regarding clear zones.

The Responsible Entity must also investigate the applicability and compliance requirements of the non 24 CFR Parts 58.5-58.6 environmental issues included on the Regulatory Checklist Guide (ERR Guide #2) and

Statutory Worksheet (ERR Guide #5). The issues include waste disposal and water quality and must be addressed for HUD activities regardless of exemption or exclusion.

Task 6: Make Finding

Subtask 4: Notify Recipient: Notify the Recipient of any further actions required to be in compliance with the other regulations.

5.2.3.6 Task 6: Make Finding (24 CFR Part 58.40(g))

The Environmental Assessment, as defined in NEPA, is a tool for the purpose of making a decision and taking an action. **Under NEPA, only two findings can be made based on the Environmental Assessment, Finding of No Significant Impact (FONSI) or a Finding of Significant Impact**. The decision made determines the course of the remainder of the process.

Subtask 1: Determine if project will have significant impact

Subtask 1: Determine if project will have significant environmental impact: The Responsible Entity, by assuming environmental responsibility, must make one of the following findings:

Subtask 2: Contact ONAP Administrator

Findings based on the EA

1. Finding of No Significant Impact (FONSI): The project will not result in a significant impact on the quality of the human environment. The Responsible Entity will conclude the review process with the following actions:

- Complete EA
- Prepare and disseminate FONSI and NOI/RROF
- Prepare certification to HUD and contact the Recipient

If there is a Finding of Significant Impact, the Responsibility Entity should consult with the Recipient and the Area ONAP Administrator to determine whether an EIS will be prepared or the review concluded and the project denied.

2. Finding of Significant Impact: The project may significantly affect the quality of the human environment. If mitigating measures have been implemented into the project plan based on considerations raised during the EA, the Responsible Entity may determine a "Finding of No Significant Impact" despite what could be construed as potentially serious environmental considerations. The Responsible Entity should continue with the following activities to determine how best to proceed.

Subtask 2: Contact the Recipient and Area ONAP Administrator: The Finding of Significant Impact is a final NEPA-mandated decision made by the RE. The decision of whether or not to continue with the project (requiring preparation of an EIS) may vary depending on HUD program regulations.

Task 7: Publish FONSI

Subtask 1: Plan FONSI public comment period

Subtask 2: Prepare FONSI

Subtask 3: Publish FONSI

Time requirements for FONSI

Items to include in the FONSI:

- The RE's name, address, telephone, and Certifying Officer
- The name of the recipient
- The name and address of the proposed project site
- The anticipated funds and a brief project summary
- Summary of findings and conclusions
- Summary of environmental effects
- Site-specific mitigation measures
- Brief description of the procedures for public comment on the FONSI

The RE should collect forms, formats, and sample templates from the Area ONAP if necessary. For detailed advice, consult CEQ regulations and see the CEQ website.

5.2.3.7 Task 7: Publish FONSI (24 CFR Part 58.43)

If the Environmental Assessment found no significant environmental impact, the Responsible Entity must prepare and disseminate a FONSI and a NOI/RROF (See Appendix F). Usually, the Responsible Entity will decide to combine the publication of these documents. If this is the case, the Responsible Entity should proceed to Combined Publication of Findings of No Significant Impact and NOI/RROF.

The FONSI is a public document in which the Responsible Entity briefly explains the reasons why an action will not have a significant effect on the quality of the human environment and, therefore, why an EIS is not required.

Subtask 1: Plan FONSI public comment period: Determine the release date for the FONSI notice. Plan the public comment period so that the public has either 15 days from the date of publication or 18 days from date of mailing and posting if not published to make objections or comments to the Responsible Entity regarding the FONSI. The date given on the notice will be the official publication date and the starting point for the public comment period. Time delays for exceptional circumstances are outlined in 24 CFR Part 58.46.

The Responsible Entity should plan the internal procedures for conducting the comment period and may want to designate one individual to receive and respond to comments and objections.

The following circumstances require that the FONSI be made available for public comment for a period of 30 days before the Recipient can file an RROF:

- Any controversy, either scientific or public, over the project
- The project is similar to other projects that normally require an EIS
- The project is unique and without precedent.

Subtask 2: Prepare FONSI: The finding itself does not need to be too detailed and should not merely repeat the EA. The FONSI should briefly state the Responsible Entity's reasons for deciding that the action will have no significant environmental effects and show which factors weighed most

heavily in the determination. The FONSI should incorporate the EA, either by summary, reference or attachment. Use the sample FONSI in Appendix F for guidance.

Subtask 3: Publish FONSI: The FONSI shall be made public by sending it to the following:

1. All known interested groups and individuals
2. Local news media
3. Appropriate tribal, local, State, and Federal authorities
4. HUD Field Office

In addition, the FONSI can either be published in a local, general circulation newspaper or, if not published, displayed in public buildings and within the project area.

Preparation of a press release does not constitute publication.

It is important to note that sending the notice to the local news media in the form of a press release does not constitute publication of the notice. The only way to ensure publication of the notice is to submit it into the Legal Notices section of the newspaper.

5.2.3.8 Task 8: Publish NOI/RROF (24 CFR Part 58.43 and 58.70)

Task 8: Publish NOI/RROF

Subtask 1: Plan NOI/RROF public comment period

Subtask 2: Prepare NOI/RROF

Subtask 3: Publish NOI/RROF (and FONSI, in not already)

If a project is found to have no significant environmental impact or the project was categorically excluded (and did not convert to exempt), the Recipient will file the RROF with HUD. Prior to the filing of the RROF, the Responsible Entity must make a public notice of the Recipient's intent to file the RROF. This notice is called the NOI/RROF.

The NOI/RROF is a public notice issued by the Responsible Entity that states that the Recipient will be requesting that funds be made available for a specific project on a specific date.

The NOI/RROF is usually published after, or combined with, publication of a FONSI that is associated with an EA.

- *Subtask 1: Plan NOI/RROF public comment period*: Determine the release date for the NOI/RROF. Plan the public comment period so that the public has 7days from the date of publication or 10 days from date of mailing and posting if not published to make objections or comments to the Responsible Entity regarding the NOI/RROF. The date given on the notice will be the official publication date and the starting point for the public comment period.

Items to Include in the NOI/RROF:

- The RE's name, address, telephone, and Certifying Officer
- The name of the recipient
- The name and address of the proposed project site
- The anticipated funds and a brief project summary
- Brief description of procedures for objections to the release of funds
- The hours and the address of the office at which a full description of the proposed action may be reviewed

Preparation of a press release does not constitute publication.

- The Responsible Entity should plan the internal procedures for conducting the comment period and may want to designate one individual to receive and respond to comments and objections.

Subtask 2: Prepare NOI/RROF: The notice should briefly state that the Recipient will be filing a Request for Release of Funds for the specified project. The notice also provides instructions and criteria for objection. Use the sample NOI/RROF in Appendix F for guidance.

Subtask 3: Publish NOI/RROF: The NOI/RROF shall be made public by sending it to the following:

1. All known interested groups and individuals
2. Local news media
3. Appropriate tribal, local, State, and Federal authorities
4. HUD Field Office

In addition, the NOI/RROF can either be published in a local, general circulation newspaper or, if not published, displayed in public buildings and within the project area.

It is important to note that sending the notice to the local news media in the form of a press release does not constitute publication of the notice. The only way to ensure publication of the notice is to submit it into the Legal Notices section of the newspaper.

Task 9: Publish FONSI and NOI/RROF Together

Subtask 1: Plan public comment period

Subtask 2: Prepare FONSI

Subtask 3: Prepare NOI/RROF

Subtask 4: Make inclusions for combined notice

Subtask 5: Publish combined notice

Special requirements of a combined FONSI and NOI/RROF notice

5.2.3.9 Task 9: Combined Notice of FONSI and NOI/RROF Publication (24 CFR Part 58.43)

There are slightly different requirements for publishing the combined FONSI and NOI/RROF.

- *Subtask 1: Plan public comment period*: Determine the date for release of the combined notice. Plan the public comment period so that the public has 15 days from the date of publication or 18 days from date of mailing and posting if not published to make objections or comments to the Responsible Entity regarding either the FONSI or the RROF. The date given on the notice will be the official publication date and the starting point for the public comment period.

The Responsible Entity should plan the internal procedures for conducting the comment period and may want to designate one individual to receive and respond to comments and objections.

Subtask 2: Prepare the FONSI: Follow instructions on the preparation of the FONSI.

Subtask 3: Prepare the NOI/RROF: Follow instructions on the preparation of the NOI/RROF.

Subtask 4: Make inclusions required for a combined notice: If the FONSI and NOI/RROF are issued simultaneously, the combined notice should note:

- That the notice is intended to satisfy two separate procedural requirements
- That public comments should specify which part of the notice they refer to
- Use the sample-combined notice in Appendix F for guidance.

Subtask 5: Publish or disseminate combined notice: Publication of the combined FONSI and NOI/RROF is subject to the same requirements as separate FONSI and NOI/RROF publications (See Appendix F).

Task 10: Conclude the Environmental Assessment

Subtask 1: Conduct public comment period

Subtask 2: Consider comments

Subtask 3: Re-eval. of environmental assessments

Subtask 4: Notify Recipient

All reasonable comments should be addressed, and modifications to the FONSI should be made as necessary.

Criteria for Re-evaluation

5.2.3.10 Task 10: Conclude the Environmental Assessment Process

Public participation in the analysis and decision making process is encouraged by NEPA. After publication of the FONSI and NOI/RROF notices, the Responsible Entity will allow access to the ERR in support of gathering public comment on the finding. The Responsible Entity should make every effort to address all comments from individuals or organizations. Some comments or objections may lead to modification of the EA, the ERR, or the FONSI.

Subtask 1: Conduct public comment period: During this period, the Responsible Entity may receive written comments and make the Environmental Review Record, including all supporting documentation, available to the public. The Responsible Entity should make sure that the office is open and that documents are available for the full period, excluding weekends.

Subtask 2: Consider comments: The Responsible Entity should review and consider all written comments received during the public comment period. The Responsible Entity should carry out additional investigation where valid issues are raised that may require further information. The circumstances and findings of this investigation should be addressed in the ERR. A response regarding the additional findings and any action or mitigation to be taken as a result should be sent directly to the individual or agency raising the issue.

Subtask 3: Re-evaluation of environmental assessments and other environmental findings (24 CFR Part 58.47): Sometimes, particularly on projects of long duration, circumstances require that the Responsible Entity re-evaluate its environmental findings to determine if the original findings are still valid. The following circumstances might warrant reevaluation:

1. Recipient proposes substantial changes in the nature, magnitude, or extent of the project
2. Evaluation of new circumstances that may affect the project that have bearing on the environmental impact
3. The Recipient proposes the selection of an alternative not in the original finding

Subtask 4: Notify Recipient: The findings and determinations made throughout the environmental review process will impact the schedule and activities of the Recipient. The Responsible Entity should maintain contact with the Recipient and inform both HUD and the Recipient of the status of

The Recipient is responsible for notifying the Responsible Entity of any changes to the project or in the environmental circumstances surrounding the project.

Task 11: Complete ERR

Subtask 1: Collect checklists and documents

Subtask 2: Describe project activities

Subtask 3: Evaluate the project

Subtask 4: Document compliance

Subtask 5: Record findings

Subtask 6: Submit copy to Recipient

the review. Contact via telephone or e-mail is adequate for status reports. If the Responsible Entity makes any determinations which effectively end the environmental review process, the Responsible Entity should notify both the Recipient and HUD in writing. The Recipient will further need to be informed as to the availability of funds and any necessary further actions.

5.2.3.11 Task 11: Complete the ERR (24 CFR Part 58.35(d))

The Environmental Review Record (ERR) is the primary requirement of the environmental review process. Every review undertaken by the Responsible Entity must be documented in an ERR regardless of the results of the review. The Responsible Entity can contact ONAP for guidance regarding appropriate content, format, and maintenance. ONAP can also provide the Responsible Entity with previous ERR documents to use as examples when completing their ERR.

The checklist on the next page can be used when completing the ERR.

Subtask 1: Collect checklists and documents: Assemble all of the documents collected or prepared during the course of the environmental review.

Subtask 2: Describe project activities: Describe the project, the activities comprising the project, and the circumstances surrounding the project and project site.

Subtask 3: Evaluate the project: Evaluate the effects of the project on the human environment. Include references to supporting documentation.

Subtask 4: Document compliance: Ensure that compliance checklists have been completed and that the appropriate documentation is attached. Include these checklists and supporting documentation in the ERR. Also, include copies of all public notices, certification, Request for Release of Funds, and other material supporting the procedures specified in 24 CFR Part 58.

Subtask 5: Record findings: Explicitly document all determinations and findings. Describe the process used to reach these conclusions and include discussion of significant issues and circumstances and their applicability to the project activities and to the regulations.

Subtask 6: Submit copy to Recipient: Forward a copy of the ERR to the Recipient. The Recipient should maintain a copy of the ERR in its project file.

The Environmental Review Record (ERR) checklist consists of the following items:

- Describe the project and the activities
- Evaluate the effects of the project on the human environment
- Document compliance with applicable statutes and authorities
- Record the written determinations and other review findings (i.e., exempt and categorically excluded determinations, and Findings of No Significant Impact)
- Include all relevant documentation supporting findings or conclusions
- Include dated copies of all public notices (including HUD form 7015.15 and HUD form 7015.16 Release of Funds)

5.2.3.12 Frequently Asked Questions

Question: How long and detailed must an environmental assessment (EA) be?

Answer: Since the EA is a concise document, it should not contain long descriptions or all of the detailed data which the Responsible Entity may have gathered in the process. It should contain a brief discussion of the need for the proposed project, alternatives to the proposal, the environmental impacts of the proposed action and of the alternatives, possible mitigating factors and a list of agencies and persons consulted.

While the regulations do not contain page limits for the EA, the CEQ has advised that the length of an EA be not more than 10-15 pages. The EA may incorporate by reference background data to support its concise discussion of the proposal and relevant issues.

Question: Is a lengthy EA ever appropriate?

Answer: The Responsible Entity should keep the EA brief except in unusual cases, where a proposal is so complex that numerous issues need to be addressed to determine the cumulative environmental impact.

Question: What are the most referenced documents on preparation of an EA?

Answer: Physical setting sources, which include geologic maps, U.S. Geological Survey (USGS) 7.5 Minute Topographic maps, ground water maps, and other specialized local maps(e.g., floodplains, wetlands, historic surveys, roads, utilities, etc.).

Site Databases, which include the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS); Resource Conservation and Recovery Act (RCRA) TSD facilities list, RCRA

generators list; State registered Underground Storage Tanks (UST) list; ERNS list; and CORRACTS list.

General Land use sources, which include local street directories, fire insurance maps, and property tax files.

Question: What is Environmental Justice?

Answer: Environmental Justice has been defined by a variety of organizations interested in the topic. EPA's Office of Environmental Justice offers the following definition:

"The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of Federal, state, local, and tribal programs and policies."

Definition of "fair treatment"

The goal of this "fair treatment" is not to shift risks among populations, but to identify potential disproportionately high and adverse effects and identify alternatives that may mitigate these impacts.

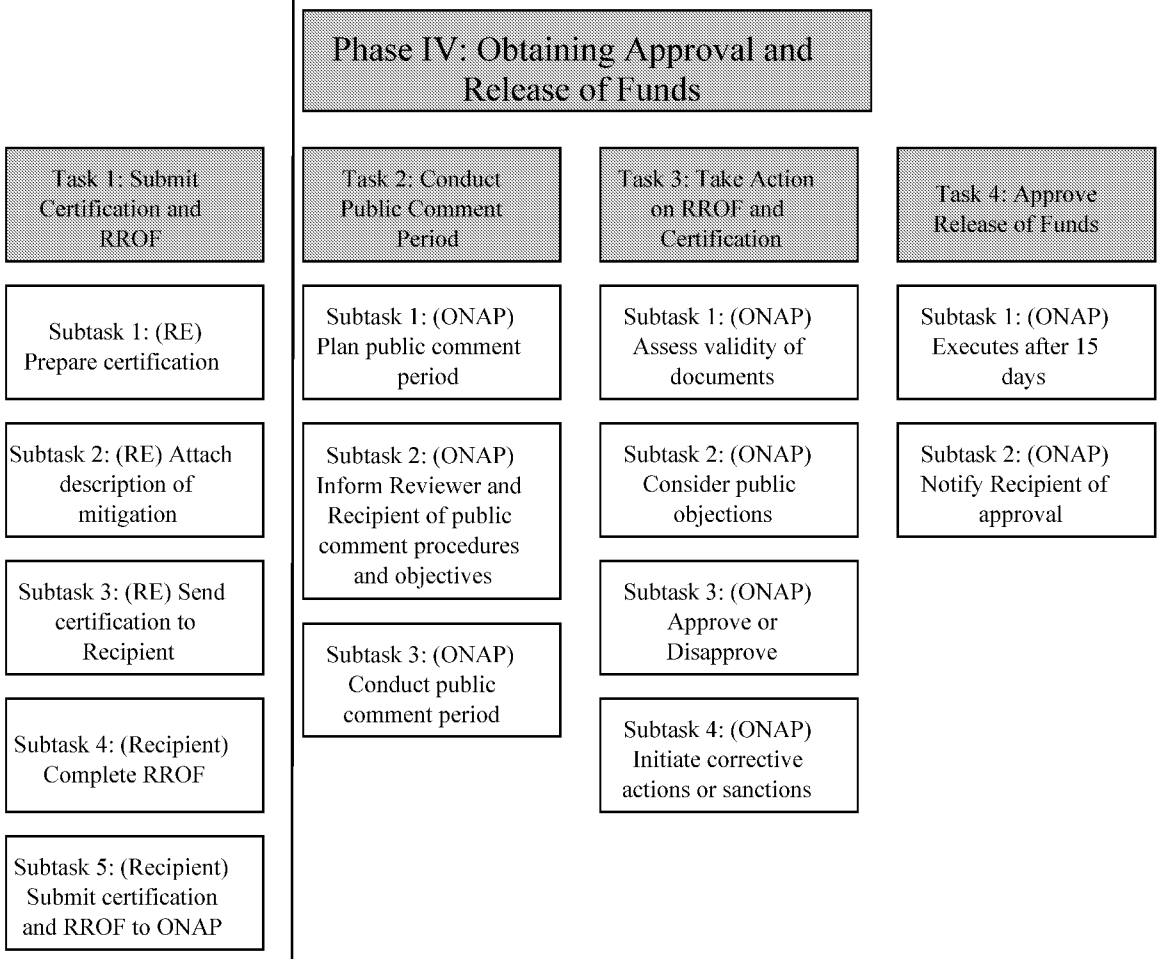
Approval Checklist:

- ***Review submitted documentation***
- ***Conduct public comment period***
- ***Approve or disapprove***
- ***File authority to use Grant funds***

5.2.4 Phase IV: Obtaining Approval and Release of Funds

This phase of the environmental review is to obtain approval of the environmental certification and the Recipient's Request for Release of Funds. In this stage of the process, the responsibilities are primarily ONAP's, although both the Responsible Entity and the Recipient are involved. This is a key area where the Responsible Entity may not be familiar with the process and will require assistance from the ONAP staff. The main task for ONAP will be to convey to the Responsible Entity and the Recipient the process by which the certification and RROF are approved. In addition, ONAP has specific duties in the approval process. Timing and notification requirements are explicit.

The checklist provided on the left is intended for ONAP and the Responsible Entity to reference throughout the approval phase.



Task 1: Submit Certification and RROF

Subtask 1: (RE) Prepare certification

Subtask 2: (RE) Attach description of mitigation

Subtask 3: (RE) Send certification to Recipient

Subtask 4: (Recipient) Complete RROF

Subtask 5: (Recipient) Submit certification and RROF to ONAP

5.2.4.1

HUD Form 7015.15 (Request for Release of Funds and Certification) is a legally binding document which the Responsible Entity's Certifying Officer executes after completing the environmental review to certify compliance with environmental laws and the assumption of environmental responsibilities.

5.2.4.1 Task 1: Submit Certification and RROF (24 CFR Parts 58.71-58.72)

Once the Responsible Entity has completed the environmental review for a categorical exclusion (that did not convert to exempt) or an environmental assessment, including compliance with all related environmental laws, made a finding, allowed for and addressed public comments on the finding, or filed an EIS if necessary, and documented these activities in the ERR, the Responsible Entity must prepare the environmental certification. (HUD form 7015.15).

In executing the certification, the Responsible Entity's Certifying Officer assumes the role of "responsible Federal official" as defined by section 102 of NEPA. As such the Certifying Officer:

- Is responsible for all of the requirements of NEPA, the provisions in 40 CFR Parts 1500 - 1508, the related authorities in 24 CFR Part 58.5, and the provisions of 24 CFR Part 58
- Is responsible to all persons or agencies seeking redress in relation to activities covered by the certification
- Represents the Responsible Entity in Federal courts
- Reviews or comments on any EIS prepared for Federal projects that might affect the recipient's project.

Subtask 1: Prepare certification (24 CFR Part 58.71): This is a key aspect of the environmental review process under 24 CFR Part 58. The Responsible Entity must complete the Part 2, Environmental Certification, side of HUD Form 7015.15. (Appendix F) Publication dates for all notices and other applicable documents and start and end dates for public comment periods should be included. The Responsible Entity's Certifying Officer must sign the certification, attesting to the accuracy and completeness of the environmental review and assuming environmental responsibility for the project. The Certifying Officer, not HUD, will be legally responsible for environmental issues related to the project.

Subtask 2: Attach description of mitigation or special instructions: Include a description of special environmental considerations or mitigation that must be addressed to in the project. The Recipient must agree to abide by any special environmental mitigation actions or considerations prescribed by the Responsible Entity. The Release of Funds is conditioned upon the recipient's acceptance of the mitigation measures put forth by the Responsible Entity.

Subtask 3: Send certification to the Recipient: Forward HUD Form 7015.15 to the Recipient for completion of the RROF side. The RE should also send the documentation described above.

Responsibilities of the Recipient

Subtask 4: Complete RROF: The Recipient should complete the Part 1, "Request for Release of Funds," portion of HUD Form 7015.15. The Recipient must agree to abide by the special considerations or requirements dictated by the environmental review and specified in the certification by the Responsible Entity. The Recipient is also responsible for informing the Responsible Entity of any proposed changes to the project or the site conditions.

Subtask 5: Submit certification and RROF to HUD: The recipient should forward the completed HUD Form 7015.15 to the ONAP Administrator. Submission of the certification and RROF does not constitute approval for the Recipient to commit funds for activities that were previously restricted.

Task 2: Conduct Public Comment Period

5.2.4.2 Task 2: Conduct Public Comment Period (24 CFR Parts 58.73, 58.74, and 58.76)

A public comment and objection period will be held before ONAP approves the Release of Funds. ONAP will forward comments received to the RE and Recipient. The RE must respond in writing and will copy ONAP on the response. Any individual or agency may raise objections regarding the performance of the review, adherence to regulations, or violations of any restrictions.

Subtask 1: (ONAP) Plan public comment period

Subtask 1: Plan public comment period: The start date for the public comment period is determined by the date specified on the NOI/RROF notice. Plan the public comment period so that the public has 15 days from the receipt of the RROF or 15 days from the date specified on the Notice, whichever is later, to make written objections to ONAP regarding the RROF and Certification.

Subtask 2: (ONAP) Inform Reviewer and Recipient of public comment procedures and objectives

Subtask 3: (ONAP) Conduct public comment period

ONAP should plan the internal procedures for conducting the comment period.

5.2.4.2

Subtask 2: Inform the Responsible Entity and the Recipient of the objection procedures: The Responsible Entity shall respond to the comments forwarded by ONAP. However, the recipient must still abide by all of the restrictions pertaining to activities and commitment of funds that apply throughout the process. The ONAP Administrator should inform the Recipient and the

Responsible Entity of the procedures and criteria governing the objection period.

Subtask 3: Conduct the public comment period: Objections to the RROF and certification must be submitted to ONAP in written form. The objection must include:

Format for Objections

- Name, address, telephone number of the individual or agency submitting the objection
- Signature of the individual or authorized agency official
- Date of signature
- Description of the basis for objection and the facts or legal authority that support the objection
- Time and date when a copy of the objection was delivered or mailed to the Responsible Entity's Certifying Officer.

5.2.4.3 Task 3: Take Action on RROF (24 CFR Part 58.72)

Task 3: Take Action on RROF and Certification

HUD must wait at least 15 days before approving the RROF and Certification to receive objections to the request. During this time, the ONAP Administrator will review the submitted documents and the written objections that have been received. ONAP will either approve or disapprove the RROF and Certification based on the objections from the public or on specific knowledge about inaccuracy or noncompliance.

The ONAP Administrator may also request all or part of the ERR from the Recipient or the Responsible Entity to assist in responding to objections.

Subtask 1: (ONAP) Assess validity of documents

Subtask 1: Assess validity of documents: The ONAP Administrator can disapprove an RROF and Certification if ONAP has knowledge of violations apart from information gained through the public comment period. At this point ONAP should consider whether the Responsible Entity has complied with all of the required steps of the environmental review process and whether the Certification and RROF are accurate. The ONAP Administrator should confirm that all required information is completed on the form and that the Certifying Officer and the Recipient have signed the form.

Subtask 2: (ONAP) Consider public objections

Subtask 2: Consider public objections: The ONAP Administrator will review and consider all written comments received during the public comment period. All comments will be provided to the RE to be addressed and investigated if necessary. A response regarding the additional findings and any action to be taken as a result will be sent directly to the individual or

Subtask 3: (ONAP) Approve or Disapprove

Subtask 4: (ONAP) Initiate corrective actions or sanctions

The ONAP environmental officer may take the following actions as a result of the review:

1. ONAP certifies environmental review and RROF
2. ONAP disapproves of the certification
3. ONAP initiates corrective action and may impose sanctions if a violation of compliance has occurred.

Criteria for Valid Public Objections

agency raising the objection. Only specific types of objections against the RROF and certification are acceptable. The following are valid objections regarding the Responsible Entity's compliance with 24 CFR Part 58.75:

- The Certification was not executed by a qualified Certifying Officer.
- The Responsible Entity did not make a Finding of No Significant Impact or a finding of significant impact through the environmental assessment but also made no written determination that the project was exempt or excluded from this requirement.
- The Responsible Entity failed to complete all of the necessary phases set forth for preparation, publication, and completion of the Environmental Assessment.
- The Responsible Entity failed to complete all of the necessary phases set forth for preparation, publication, and completion of the Environmental Impact Statement.
- The Recipient committed funds or engaged in activities that are restricted prior to the approval of certification and RROF.
- Another Federal agency has submitted a written finding that the project will be unsatisfactory based on environmental quality.

Criteria for Disapproval

Subtask 3: Approve or disapprove certification (24 CFR Part 58.77): The ONAP Administrator should disapprove the environmental certification and RROF under the following circumstances:

- ONAP has knowledge that the Responsible Entity has not complied with applicable requirements of Part 58 for conducting the environmental review.
- ONAP has knowledge that the certification or RROF are inaccurate.
- ONAP receives valid public objections from an individual or agency attesting to the Responsible Entity's non-compliance or to the inaccuracy of the certification and RROF.

If no objections are raised and ONAP has no reason to believe that the certification and RROF are in error, ONAP should assume their validity and approve the documents as described below.

Subtask 4: Initiate corrective actions and impose sanctions if necessary: If ONAP has approved an RROF and certification but later learns of a violation of 24 CFR Part 58 or of any applicable statutes, ONAP shall impose sanctions or remedies in accord with the law and regulations for the program under which the violation was found. Violations on the part of either the

Recipient or the Responsible Entity are subject to sanction by ONAP. The actions taken by ONAP may include:

- Requiring Responsible Entity staff to attend HUD sponsored or approved training, which will be provided periodically at various locations across the nation
- Refusal to accept environmental compliance certifications from the Responsible Entity on subsequent grants
- Suspension or termination of the Responsible Entity's assumption of review responsibilities
- Initiation of other sanctions, corrective actions, or remedies specified in program regulations or agreements.

5.2.4.4 Task 4: Approve Release of Funds (24 CFR Part 58.72)

Task 4: Approve Release of Funds

Subtask 1: (ONAP) Executes after 15 days

Subtask 2: (ONAP) Notify Recipient of approval

Execution of HUD form 7015.16, Authority to Use Grant Funds, releases all funds allocated to the Recipient.

After receiving the Certification and RROF, the ONAP Administrator must wait 15 days before approving them and releasing funds. The release of funds is the last step of the environmental review process. Upon completion of this task, all environmental restrictions and limitations on activities and expenditures by the Recipient are lifted.

Subtask 1: Executes approval after the 15-day waiting period: If the Certification and RROF are approved, the ONAP Administrator executes Form 7015.16, Authority to Use Grant Funds. This form is executed by the ONAP Administrator after the 15-day objection period and is contingent upon the ONAP Administrator's determination that objections were not received, were not permissible, or were satisfactorily resolved. Execution of this form releases the allocated funds for the use of the Recipient.

Subtask 2: Notify Recipient: Forward the Authority to Use Grant Funds to the Recipient. The Recipient may begin using funds for the approved project upon receipt of this notice. If the Recipient persists in non-compliance, the RE should notify ONAP. ONAP will proceed according to program guidelines. The RE should not sign the environmental certification until the issue of the Recipient's non-compliance is resolved.

5.2.4.5 Frequently Asked Questions

Question: What actions should the RE take if it becomes aware that the Recipient is about to take an action that would either have an adverse environmental impact or limit the choice of reasonable alternatives (i.e., commit funds or other resources towards the completion of the proposal)?

Answer: The entity should notify the Recipient that it is in violation of NEPA. The Recipient should be made aware that actions will be taken to ensure compliance with NEPA and that approval of funding for the project may be in jeopardy. If the Recipient persists in non-compliance, the RE should notify the Area ONAP. The Area ONAP will proceed according to program guidelines. The RE should not sign the environmental certification until the issue of the Recipient's non-compliance is resolved.

VI. Monitoring

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VI. Monitoring and Training

A. Monitoring of Responsible Entities

As a continuation of HUD's partnership with the community, the ONAP Area Office staff assumes monitoring and training responsibilities under 24 CFR Part 58. The environmental staff is responsible for in-depth monitoring of the environmental reviews conducted by the RE. The ONAP Area Office Grant Evaluation staff is responsible for limited monitoring of their REs. These measures help ensure that the REs are consistently performing complete and accurate environmental reviews within their jurisdictions.

HUD's monitoring role is described in 24 CFR Part 58.77(d). The purpose of this role is to ensure that the REs have accurate, up-to-date information on HUD environmental requirements and are aware of the issues and resources that most affect HUD projects. The RE's Certifying Officer will be accountable for conducting the environmental review in accordance with NEPA and the CEQ guidelines. The Certifying Officer's liability can be limited by strict compliance with the environmental review activities prescribed by Part 58 as well as through proper documentation of the entire process. ONAP's monitoring can highlight deficiencies in the RE's current practice that might otherwise have legal ramifications for the RE. Additionally, although a cooperative approach toward improvement will be encouraged, HUD has the authority under 24 CFR Part 58.77 (d) to enact sanctions against an RE that fails to comply with HUD regulations for conducting and processing environmental reviews.

B. Approaches to Monitoring

Limited Monitoring by the Recuipient/RE and ONAP

Limited monitoring is done by the Responsible Entity's staff.

Limited monitoring will be used to address the RE's internal control mechanisms and their compliance with the documentation, circulation, and scheduling requirements of Part 58. (It will also be used in those circumstances when a tribe has decided not to assume environmental review responsibilities to review its compliance with 24 CFR 50.3(h)). This monitoring does not cover any technical environmental areas and can be conducted by personnel without environmental training. Such monitoring done by the recipient or RE for IHBG activities will be part of the overall self-assessment process. You are referred to Chapter 12- Environmental Review -of the May 2000 NAHASDA Indian Housing Block Grant Recipient Self-Monitoring Compliance Assessment Guidebook (May 2000) available form any Area ONAP) for guidance and review checklists. Area ONAP

Grant Evaluation staff will also conduct a limited review of compliance with environmental review responsibilities as part of any on-site or remote monitoring activity (see Appendix F. no.3 for a checklist for such a review).

Limited monitoring should include:

- An evaluation of the RE's record-keeping system
- A listing of personnel and staff categories assigned to perform, review, or manage environmental assessments
- An evaluation of in-house resources, e.g., map libraries, database and internet access, CD ROM, etc.
- An evaluation of compliance with procedural and documentation requirements

In-depth Monitoring

In-depth monitoring is done by the HUD environmental staff.

In-depth monitoring is a scheduled, intensive monitoring visit conducted by HUD's environmental staff. In-depth monitoring should address the accuracy and performance of the environmental review as well as the areas of concern identified during previous limited monitoring. An environmental professional will need to pull files, conduct site visits, and evaluate the qualifications of the preparers of the Environmental Review. The Monitoring Questionaire (Appendix F) may be used by the environmental staff to conduct an in-depth review. This questionaire is useful as a guide for Recipients or REs who wish to undertake their own in-depth monitoring.

In-depth monitoring should include:

- Procedural review of ERR documents based on Part 58
- Substantive review of the handling and technical accuracy of relevant environmental areas in the environmental review
- Review of the use of mitigating measures to attain compliance and review of the RE's method for ensuring that mitigating measures are actually implemented by the Recipient.

Steps for Conducting In-Depth Monitoring

In-depth monitoring can be conducted using five steps:

- Notification Letter - formal letter stating date and scope of visit, specific data requirements, personnel to interview, and other areas/topics to be reviewed.

- Preliminary Introduction - brief meeting with RE Certifying Officer and key personnel to reconfirm scope of monitoring and ONAP's role and goals in monitoring.
- Documentation, Data Collection and Inspection - inspection of the RE's facilities, interviews with RE personnel, pulling of ERR documents, and site visits (if necessary).
- Monitoring Wrap-up - brief presentation of tentative findings, clarification of misunderstandings or incomplete information, and acknowledgment of issues of concern to the RE.
- Follow-up Letter - formal letter describing deficiencies, both concerns and findings of non-compliance, recommendations for improvement, and additional actions to be taken by ONAP or the RE.

Both limited and in-depth monitoring will require HUD staff to visit the RE's office facility and ask questions of RE personnel. Monitoring is most effective if the RE becomes actively involved in sorting out areas of confusion and finding solutions to areas of non-compliance. Monitoring should be used as a tool to provide both positive and negative feedback in an informal learning environment. The monitoring process should help the RE perform in compliance with environmental and HUD regulations, thereby decreasing the risk of HUD sanctions or outside suits. Issues highlighted by monitoring can form the basis for periodic training.

C. Corrective Actions

If the HUD Area ONAP Administrator or staff becomes aware of any environmental deficiencies through monitoring activities, ONAP can do the following:

- Reschedule an in-depth monitoring session for an earlier date or chose to schedule in-depth monitoring sessions more frequently
- Require RE staff to attend HUD sponsored or approved training, which will be provided periodically at various locations across the nation
- Refuse to accept environmental compliance certifications from the RE on subsequent grants
- Suspend or terminate the RE's assumption of review responsibilities
- Initiate sanctions, corrective actions, or other remedies specified in program agreements.

D. Timing and Funding

Under Part 58, limited monitoring of environmental activities should be conducted during each program monitoring site visit. The ONAP staff will conduct informal monitoring as often as is practicable as part of more general programmatic monitoring. With limited funding for travel and monitoring even at the program level, informal monitoring will be constrained by the program monitoring schedule. Some information for informal monitoring of REs that are rarely visited can also be obtained by sending questionnaires to the REs regarding procedures and personnel assignments. Periodically requesting a copy of the complete ERR for a project is another way that ONAP can informally monitor the RE. These off-site assessments should not be substituted for on-site limited and in-depth monitoring but can be used as tools for tracking the RE and maintaining contact when on-site visits are not possible.

In-depth monitoring should be conducted at least once every three years in order to evaluate the performance of those REs executing environmental reviews. In-depth monitoring will require on-site visits and file reviews as described above. If serious environmental deficiencies are identified through either limited or in-depth monitoring, the HUD Environmental Office may have to schedule more frequent in-depth monitoring of the RE.

ONAP prioritizes its monitoring schedule

Because resources for monitoring are limited, the ONAP Area Office should schedule monitoring so that Responsible Entities are prioritized according to their need. REs that have a high priority for monitoring include:

- REs with previous compliance or performance problems (i.e., REs in danger of losing RE status)
- REs that have not been monitored in the past 24 months
- REs for which objections to the Release of Funds have been made
- New REs
- REs that have experienced significant turnover in personnel.

E. Training of Responsible Entities

Training responsibilities will be shared by the HUD environmental staff and the ONAP Area Office Grant Administration staff. The environmental staff is responsible for technical training related to conducting the environmental review or any part of it. In the absence of, or in addition to, technical training provided by the environmental staff, technical training can be obtained from outside vendors such as local colleges or professional organizations. The ONAP Area Office Grant Administration staff are responsible for procedural

training on HUD's specific compliance requirements. This training supplements the technical material with HUD procedures. The purpose of training should be to help the REs to perform better environmental reviews and to achieve full compliance with HUD's regulations on conducting environmental reviews.

F. Monitoring the Recipient

The environmental review is only effective if the decisions made during the process are implemented by the Recipient. This is particularly true of mitigative or corrective actions that were not part of the Recipient's initial project proposal. In signing the Request for Release of Funds, the Recipient agrees to abide by any conditions or mitigating action specified by the Responsible Entity in the certification. The Recipient also agrees to notify the Responsible Entity if any significant changes occur in the environmental conditions or in the project scope.

Because the Responsible Entity's Certifying Officer is legally responsible for the environmental impact of the project, the Responsible Entity should exercise some monitoring of the Recipient. This monitoring might occur through formal site visits as well as through informal contact with the Recipient. A cooperative partnership between the Responsible Entity and the Recipient will facilitate closer monitoring and earlier awareness of potential problems. For this purpose the point of contact system established during the environmental review should be maintained after the review has been completed. If for any reason the POC must change, it is suggested that the counterpart POC be notified of the change.

VII. Appendices

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A. NEPA Statute and Regulations

Appendix A: NEPA Statute and Regulations

The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC § 4321]. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain,

wherever possible, an environment which supports diversity, and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 USC § 4332]. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC § 4333]. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC § 4334]. Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC § 4335]. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201 [42 USC § 4341]. The President shall transmit to the Congress annually beginning July 1, 1970; an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban an rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC § 4342]. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC § 4343].

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 USC § 4344]. It shall be the duty and function of the Council --

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205 [42 USC § 4345]. In exercising its powers, functions, and duties under this Act, the Council shall --

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206 [42 USC § 4346]. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

Sec. 207 [42 USC § 4346a]. The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 USC § 4346b]. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC § 4347]. There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

The **Environmental Quality Improvement Act**, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

42 USC § 4372.

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions ;under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by --

(1) providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;

(2) assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;

(3) reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

(4) promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

(5) assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

(6) assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;

(7) collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC § 4373. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

42 USC § 4374. There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

(a) $2,126,000 for the fiscal year ending September 30, 1979.

(b) $3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.

(c) $44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) $480,000 for each of the fiscal years ending September 30, 1985 and 1986.

42 USC § 4375.

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

(1) study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

(2) Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

40 CFR Parts 1500-1508

Council on Environmental Quality

Regulations for Implementing the Provisions of the National Environmental Policy Act

- PART 1500--PURPOSE, POLICY, AND MANDATE
- PART 1501--NEPA AND AGENCY PLANNING
- PART 1502--ENVIRONMENTAL IMPACT STATEMENT
- PART 1503--COMMENTING
- PART 1504--PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY
- PART 1505--NEPA AND AGENCY DECISIONMAKING
- PART 1506--OTHER REQUIREMENTS OF NEPA
- PART 1507--AGENCY COMPLIANCE
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PART 1500--PURPOSE, POLICY, AND MANDATE

Sec.

1500.1 Purpose.

1500.2 Policy.

1500.3 Mandate.

1500.4 Reducing paperwork.

1500.5 Reducing delay.

1500.6 Agency authority.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and E.O. 11514, Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55990, Nov. 28, 1978, unless otherwise noted.

Sec. 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act

of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork--even excellent paperwork--but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

Sec. 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

Sec. 1500.3 Mandate.

Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions

(environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

Sec. 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (Sec. 1502.2(c)), by means such as setting appropriate page limits (Secs. 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (Sec. 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (Sec. 1502.2(b)).

(d) Writing environmental impact statements in plain language (Sec. 1502.8).

(e) Following a clear format for environmental impact statements (Sec. 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (Secs. 1502.14 and 1502.15) and reducing emphasis on background material (Sec. 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (Sec. 1501.7).

(h) Summarizing the environmental impact statement (Sec. 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (Sec. 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (Secs. 1502.4and 1502.20).

(j) Incorporating by reference (Sec. 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (Sec. 1502.25).

(l) Requiring comments to be as specific as possible (Sec. 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (Sec. 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (Sec. 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3).

(o) Combining environmental documents with other documents (Sec. 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (Sec. 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (Sec. 1508.13).

[43 FR 55990, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (Sec. 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (Sec. 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (Sec. 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (Sec. 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (Secs. 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (Sec. 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (Sec. 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (Sec. 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3).

(i) Combining environmental documents with other documents (Sec. 1506.4).

(j) Using accelerated procedures for proposals for legislation (Sec. 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (Sec. 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (Sec. 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

Sec. 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

PART 1501--NEPA AND AGENCY PLANNING

Sec..

1501.1 Purpose.

1501.2 Apply NEPA early in the process.

1501.3 When to prepare an environmental assessment.

1501.4 Whether to prepare an environmental impact statement.

1501.5 Lead agencies.

1501.6 Cooperating agencies.

1501.7 Scoping.

1501.8 Time limits.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55992, Nov. 29, 1978, unless otherwise noted.

Sec. 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

Sec. 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by Sec. 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

Sec. 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (Sec. 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in Sec. 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

Sec. 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in Sec. 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (Sec. 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by Sec. 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (Sec. 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (Sec. 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in Sec. 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under Sec. 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to Sec. 1507.3, or

(ii) The nature of the proposed action is one without precedent.

Sec. 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (Sec. 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in Sec. 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

Sec. 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (Sec. 1508.22) in the Federal Register except as provided in Sec. 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under Sec. 1507.3(c). An agency may give notice in accordance with Sec. 1506.6.

(2) Determine the scope (Sec. 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (Sec. 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under

being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in Sec. 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (Sec. 1502.7).

(2) Set time limits (Sec. 1501.8).

(3) Adopt procedures under Sec. 1507.3to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

Sec. 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by Sec. 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: Provided, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process, which may include:

(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

PART 1502--ENVIRONMENTAL IMPACT STATEMENT

Sec.

1502.1 Purpose.

1502.2 Implementation.

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1502.24 Methodology and scientific accuracy.

1502.25 Environmental review and consultation requirements.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

Sec. 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

Sec. 1502.2 Implementation.

Sec. 1502.2 Implementation.

To achieve the purposes set forth in Sec. 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (Sec. 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

Sec. 1502.3 Statutory requirements for statements.

As required by sec. 102(2)(C) of NEPA environmental impact statements (Sec. 1508.11) are to be included in every recommendation or report.

On proposals (Sec. 1508.23).

For legislation and (Sec. 1508.17).

Other major Federal actions (Sec. 1508.18).

Significantly (Sec. 1508.27).

Affecting (Secs. 1508.3, 1508.8).

The quality of the human environment (Sec. 1508.14).

Sec. 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (Sec. 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact

other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (Sec. 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (Sec. 1501.7), tiering (Sec. 1502.20), and other methods listed in Secs. 1500.4and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

Sec. 1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (Sec. 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (Secs. 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

Sec. 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter- disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (Sec. 1501.7).

Sec. 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of Sec. 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

Sec. 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

Sec. 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in Sec. 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

Sec. 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for action.

(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).

(h) List of preparers.

(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.

(j) Index.

(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in Secs. 1502.11 through 1502.18, in any appropriate format.

Sec. 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA under Sec. 1506.10).

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

Sec. 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

Sec. 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

Sec. 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (Sec. 1502.15) and the Environmental Consequences (Sec. 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

Sec. 1502.15 Affected environment.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

Sec. 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

Sec. 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under Sec. 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in Sec. 1502.14. It shall include discussions of:

(a) Direct effects and their significance (Sec. 1508.8).

(b) Indirect effects and their significance (Sec. 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See Sec. 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under Sec. 1502.14will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under Sec. 1502.14(f)).

[43 FR 55994, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (Secs. 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

Sec. 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (Sec. 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

Sec. 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in Sec. 1502.18(d) and unchanged statements as provided in Sec. 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

Sec. 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (Sec. 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program

or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

Sec. 1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

Sec. 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the Federal Register on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

[51 FR 15625, Apr. 25, 1986]

Sec. 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being

considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

Sec. 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

Sec. 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503--COMMENTING

Sec.

1503.1 Inviting comments.

1503.2 Duty to comment.

1503.3 Specificity of comments.

1503.4 Response to comments.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55997, Nov. 29, 1978, unless otherwise noted.

Sec. 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental

impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under Sec. 1506.10.

Sec. 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in Sec. 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

Sec. 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft

statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

Sec. 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (Sec. 1502.19). The entire document with a new cover sheet shall be filed as the final statement (Sec. 1506.9).

PART 1504--PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec.

1504.1 Purpose.

1504.2 Criteria for referral.

1504.3 Procedure for referrals and response.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et

seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55998, Nov. 29, 1978, unless otherwise noted.

Sec. 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

Sec. 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

Sec. 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's

environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in

support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response.

(f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

[43 FR 55998, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

PART 1505--NEPA AND AGENCY DECISIONMAKING

Sec.

1505.1 Agency decisionmaking procedures.

1505.2 Record of decision in cases requiring environmental impact statements.

1505.3 Implementing the decision.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55999, Nov. 29, 1978, unless otherwise noted.

Sec. 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (Sec. 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

Sec. 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (Sec. 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6(c) and (d), and Part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

Sec. 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (Sec. 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead

agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506--OTHER REQUIREMENTS OF NEPA

Sec.

1506.1 Limitations on actions during NEPA process.

1506.2 Elimination of duplication with State and local procedures.

1506.3 Adoption.

1506.4 Combining documents.

1506.5 Agency responsibility.

1506.6 Public involvement.

1506.7 Further guidance.

1506.8 Proposals for legislation.

1506.9 Filing requirements.

1506.10 Timing of agency action.

1506.11 Emergencies.

1506.12 Effective date.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 56000, Nov. 29, 1978, unless otherwise noted.

Sec. 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in Sec. 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g. long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

Sec. 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be

joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

Sec. 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under Part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

Sec. 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

Sec. 1506.5 Agency responsibility.

(a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (Sec. 1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) Environmental assessments. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) Environmental impact statements. Except as provided in Secs. 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under Sec. 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

Sec. 1506.6 Public involvement.

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

Sec. 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

Sec. 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (Sec. 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of

an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; Provided, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by Secs. 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

Sec. 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and Sec. 1506.10.

Sec. 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under Sec. 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see Sec. 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

[43 FR 56000, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

Sec. 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

Sec. 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under section 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No

regulations are applicable, the Council's guidelines published in the Federal Register of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

PART 1507--AGENCY COMPLIANCE

Sec.

1507.1 Compliance.

1507.2 Agency capability to comply.

1507.3 Agency procedures.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 56002, Nov. 29, 1978, unless otherwise noted.

Sec. 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by Sec. 1507.3to the requirements of other applicable laws.

Sec. 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of

section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

Sec. 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the Federal Register, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the Federal Register for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by Secs. 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (Sec. 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in Sec. 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by Sec. 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508--TERMINOLOGY AND INDEX

Sec.

1508.1 Terminology.

1508.2 Act.

1508.3 Affecting.

1508.4 Categorical exclusion.

1508.5 Cooperating agency.

1508.6 Council.

1508.7 Cumulative impact.

1508.8 Effects.

1508.9 Environmental assessment.

1508.10 Environmental document.

1508.11 Environmental impact statement.

1508.12 Federal agency.

1508.13 Finding of no significant impact.

1508.14 Human environment.

1508.15 Jurisdiction by law.

1508.16 Lead agency.

1508.17 Legislation.

1508.18 Major Federal action.

1508.19 Matter.

1508.20 Mitigation.

1508.21 NEPA process.

1508.22 Notice of intent.

1508.23 Proposal.

1508.24 Referring agency.

1508.25 Scope.

1508.26 Special expertise.

1508.27 Significantly.

1508.28 Tiering.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

Sec. 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

Sec. 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

Sec. 1508.3 Affecting.

"Affecting" means will or may have an effect on.

Sec. 1508.4 Categorical exclusion.

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Sec. 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Sec. 1508.5 Cooperating agency.

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in Sec. 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Sec. 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

Sec. 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Sec. 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Sec. 1508.9 Environmental assessment.

"Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section

102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Sec. 1508.10 Environmental document.

"Environmental document" includes the documents specified in Sec. 1508.9 (environmental assessment), Sec. 1508.11 (environmental impact statement), Sec. 1508.13 (finding of no significant impact), and Sec. 1508.22 (notice of intent).

Sec. 1508.11 Environmental impact statement.

"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

Sec. 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

Sec. 1508.13 Finding of no significant impact.

"Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

Sec. 1508.14 Human environment.

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (Sec. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Sec. 1508.15 Jurisdiction by law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

Sec. 1508.16 Lead agency.

"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

Sec. 1508.17 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

Sec. 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Sec. 1508.19 Matter.

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of

NEPA applies.

Sec. 1508.20 Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

Sec. 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

Sec. 1508.22 Notice of intent.

"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

Sec. 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

Sec. 1508.24 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

Sec. 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs. 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include: (1) No action alternative.

(2) Other reasonable courses of actions.

(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

Sec. 1508.26 Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

Sec. 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than

one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

[43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

Sec. 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site- specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such

as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

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Last Updated: 03/02/95

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Appendix B: 24 CFR Part 58

(2) Under §55.20(e), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain as identified in §55.20(d) have been applied to the design for the proposed action.

(b) For purposes of compliance with §55.24, §55.25, or §55.26 (as appropriate), the responsible HUD official (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) who would approve the proposed action shall require documentation of compliance with the required conditions.

(c) Documentation of compliance with this part (including copies of public notices) must be attached to the environmental assessment, the environmental impact statement or the compliance record and be maintained as a part of the project file. In addition, for environmental impact statements, documentation of compliance with this part must be included as a part of the record of decision (or environmental review record for grant recipients subject to 24 CFR part 58).

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

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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.

SOURCE: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

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

§ 58.1 Purpose and applicability.

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

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

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

(2) The Rental Rehabilitation program and Housing Development Grant program authorized by section 17 of the United States Housing Act of 1937, in accordance with sections 17(i)(1) and 17(i)(2) with respect to projects and programs for which binding commitments have been entered into prior to October 1, 1991, since section 17 was repealed by the Cranston-Gonzalez National Affordable Housing Act enacted November 28, 1990 (42 U.S.C. 1437o(i)(1) and (2));

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

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

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

(6)(i) Public Housing Programs under Title I of the United States Housing Act of 1937, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Indian Housing Programs under Title I of the United States Housing Act of 1937, including the Mutual Help Program, in accordance with section 26 (42 U.S.C. 1437x); and

(iii) Assistance administered by a public housing agency or Indian housing authority under section 8 of the United States Housing Act of 1937, except for assistance provided under 24 CFR part 886, in accordance with section 26 (42 U.S.C. 1437x);

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

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

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

§ 58.2 Terms, abbreviations and definitions.

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

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

(2) *Certifying Officer* means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of § 58.13.

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

(i) Actions that are unique or without precedent;

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

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

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

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

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

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

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

(iii) A unit of general local government;

(iv) An Indian tribe;

(v)(A) With respect to Public Housing Programs under § 58.1(b)(6)(i), a public housing agency;

(B) With respect to Indian Housing Programs under § 58.1(b)(6)(ii), an Indian housing authority;

(C) With respect to section 8 assistance under § 58.1(b)(6)(iii), a public housing agency or Indian housing authority;

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

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

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

(6) *Release of funds.* In the case of the FHA Multifamily Housing Finance Agency Pilot Program under § 58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter.

(7) *Responsible Entity* means:

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

(ii) With respect to environmental responsibilities under the programs listed in § 58.1(b) (6) through (9), a State, unit of general local government, Indian tribe or Alaska native village, when it is the recipient under the program. Non-recipient responsible entities are designated as follows:

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

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

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

(D) For Indian housing authorities (outside of Alaska), the Indian tribe in whose jurisdiction the project is located, or if the project is located outside of a reservation, the Indian tribe that established the authority; and

(E) For Indian housing authorities in Alaska, the Alaska native village in whose community the project is located, or if HUD determines this infeasible, a unit of general local government or the State, as designated by HUD.

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

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

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

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

(1) CDBG—Community Development Block Grant;
(2) CEQ—Council on Environmental Quality;
(3) EA—Environmental Assessment;
(4) EIS—Environmental Impact Statement;
(5) EPA—Environmental Protection Agency;
(6) ERR—Environmental Review Record;
(7) FONSI—Finding of No Significant Impact;
(8) HUD—Department of Housing and Urban Development;
(9) NAHA—Cranston-Gonzalez National Affordable Housing Act of 1990;
(10) NEPA—National Environmental Policy Act of 1969, as amended;
(11) NOI/EIS—Notice of Intent to Prepare an EIS;
(12) NOI/RROF—Notice of Intent to Request Release of Funds;
(13) ROD—Record of Decision;
(14) ROF—Release of Funds; and
(15) RROF—Request for Release of Funds.

§ 58.4 Assumption authority.

(a) *Assumption authority for responsible entities: General.* Responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in § 58.5. Responsible entities that receive assistance directly from HUD assume these responsibilities by execution of a grant agreement with HUD and/or a legally binding document such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.

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

(2) States must exercise HUD's responsibilities in accordance with § 58.18, with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the State, except for projects assisted by Section 17 Rental Rehabilitation assistance and Housing Development Grants. Approval by the State of a unit of local government's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in § 58.5.

(3) For section 17 Rental Rehabilitation projects and Housing Development Grants, the State agency shall meet the responsibilities set forth in § 58.18. However, for section 17 projects, the

State lacks authority to approve RROFs and therefore must forward to the responsible HUD Field Office the local recipient's certification and RROF, any objections to the release of funds submitted by another party, and the State's recommendation as to whether HUD should approve the certification and the RROF.

§ 58.5 Related Federal laws and authorities.

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

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2), except as provided in § 58.17 for Section 17 projects.

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

(3) Federal historic preservation regulations as follows:

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

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

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

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

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, particularly sections 2 and 5.

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

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

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

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

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

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

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

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

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

(i) *HUD environmental standards.* Applicable criteria and standards specified in HUD environmental regulations (24 CFR part 51) (other than the runway clear zone and clear zone notification requirement in 24 CFR 51.303 (a)(3)) and HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979).

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

§ 58.6 Other requirements.

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

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

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

(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.

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

(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 flood insurance.

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

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

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

EFFECTIVE DATE NOTE: At 63 FR 15271, Mar. 30, 1998, § 58.6 was amended in the introductory text by removing the term "§ 58.34(a)(11)" and replacing it with the term "§ 58.34(a)(12)"; revising paragraphs (a) (1)(ii) and (2); redesignating paragraphs (b) and (c) as (c) and (d) respectively; and adding new paragraph (b), effective April 29, 1998. For the convenience of the user, the superseded text is set forth as follows:

§ 58.6 Other requirements.

* * * * *

(a) * * *

(1) * * *

(ii) Flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

(2) Where a 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.

* * * * *

Subpart B—General Policy: Responsibilities of Responsible Entities

§ 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.

[63 FR 15271, Mar. 30, 1998]

EFFECTIVE DATE NOTE: At 63 FR 15271, Mar. 30, 1998, § 58.10 was revised, effective Apr. 29, 1998. For the convenience of the user, the superseded text is set forth 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. The provisions of the CEQ regulations in 40 CFR parts 1500 through 1508 are applicable to this part.

§ 58.11 Legal capacity and performance.

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

(b) If a public housing, Indian housing, special project or self-help homeownership opportunity recipient objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.

(c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with § 58.77(d)(1).

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

§ 58.12 Technical and administrative capacity.

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

§ 58.13 Responsibilities of the certifying officer.

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

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

(b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may

have an impact on the recipient's program.

§ 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.

[63 FR 15271, Mar 30, 1998]

EFFECTIVE DATE NOTE: At 63 FR 15271, Mar. 30, 1998, § 58.14 was revised, effective Apr. 29, 1998. For the convenience of the user, the superseded text is set forth as follows:

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

A responsible entity shall consult, as 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 (see 40 CFR 1501.5(b) and 1501.6). A single EIS 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.

§ 58.15 Tiering.

Responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.

§ 58.17 Historic preservation requirements for prior section 17 grants.

A recipient of a section 17 grant shall comply with the historic preservation requirements of this part and existing grant agreements.

§ 58.18 Responsibilities of States assuming HUD responsibilities.

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

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

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

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

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

(b) States administering section 17 Programs shall assume the responsibilities set forth in this section for overseeing the State recipient's performance and compliance with NEPA and related Federal authorities as set forth in this part, including receiving RROFs and environmental certifications for particular projects from State recipients and objections from government agencies and the public in accordance with the procedures contained in subpart H of this part. The State shall forward to the responsible HUD Field Office the environmental certification, the RROF and any objections received, and shall recommend whether to approve or disapprove the certification and RROF.

Subpart C—General Policy: Environmental Review Procedures

§ 58.21 Time periods.

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

§ 58.22 Limitations on activities pending clearance.

(a) A recipient may not commit HUD assistance funds under a program listed in § 58.1(b) on an activity or project until HUD or the State has approved the recipient's RROF and the related certification of the responsible entity. In addition, until the RROF and related certification has been approved, the recipient may not commit non-HUD funds on an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. If an activity is exempt under § 58.34, or not subject to § 58.5 under § 58.35(b), no RROF is required and a recipient may undertake the activity immediately after the award of the assistance.

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

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

§ 58.23 Financial assistance for environmental review.

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

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

§ 58.30 Environmental review process.

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

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

§ 58.32 Project aggregation.

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

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

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

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

(2) Consider reasonable alternative courses of action.

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

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

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

(2) When one or more of the conditions described in § 58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

§ 58.33 Emergencies.

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

(b) If funds are needed on an emergency basis and when adherence to separate comment periods would prevent the giving of assistance, the combined Notice of FONSI and the Notice of the Intent to Request Release of Funds may be disseminated and/or published simultaneously with the submission of the Request for Release of Funds (RROF). The combined Notice of FONSI and NOI/ROF shall state that the funds are needed on an immediate emergency basis due to a Presidentially declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity

issuing the notice to assure that these comments will receive full consideration.

§ 58.34 Exempt activities.

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

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

(2) Information and financial services;

(3) Administrative and management activities;

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

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

(6) Purchase of insurance;

(7) Purchase of tools;

(8) Engineering or design costs;

(9) Technical assistance and training;

(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;

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

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

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

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

EFFECTIVE DATE NOTE: At 63 FR 15271, Mar. 30, 1998, § 58.34 was amended by revising paragraph (a)(10), effective Apr. 29, 1998. For the convenience of the user, the superseded text is set forth 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, imminent threats or physical deterioration;

* * * * *

§ 58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see § 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in § 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) *Categorical exclusions subject to § 58.5.* The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in § 58.5:

(1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of

and accessibility to elderly and handicapped persons.

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

(i) In the case of multifamily residential buildings:

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

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

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

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

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

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

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

(5) Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.

(6) Combinations of the above activities.

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

(1) Tenant-based rental assistance;

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

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

(4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

(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.

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

(c) *Circumstances requiring NEPA review.* If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

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

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

EFFECTIVE DATE NOTE: At 63 FR 15272, Mar. 30, 1998, § 58.35 was amended by revising paragraph (b)(5), effective April 29, 1998. For the convenience of the user, the superseded text is set forth as follows:

§ 58.35 Categorical exclusions.

* * * * *

(b) * * *

(5) Activities to assist homeownership of existing "or new dwelling units not assisted with Federal funds" including closing costs and down payment assistance to home buyers, interest buydowns and similar activities that result in the transfer of title to a property;

* * * * *

§ 58.36 Environmental assessments.

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

§ 58.37 Environmental impact statement determinations.

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

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

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

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

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

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

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

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

§ 58.38 Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the "Environmental Review Record" (ERR), and shall be available for public review. The responsible entity must use the current HUD-recommended formats or develop equivalent formats.

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

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

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

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

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

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

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

§ 58.40 Preparing the environmental assessment.

The responsible entity may prepare the EA using the HUD recommended format. In preparing an EA for a particular project, the responsible entity must:

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

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

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

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

(e) Examine alternatives to the project itself, if appropriate, including the alternative of no action.

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

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

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

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

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

(a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.

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

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

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

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

§ 58.45 Public comment periods.

(a) Notice of finding of no significant impact: 15 days from date of publication or if no publication, 18 days from the date of mailing and posting.

(b) Notice of intent to request release of funds: 7 days from date of publication or if no publication, 10 days from date of mailing and posting.

(c) Concurrent or combined notices: Same as FONSI notice.

§ 58.46 Time delays for exceptional circumstances.

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

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

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

(c) The project is unique and without precedent.

§ 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:

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

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

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

(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.

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

EFFECTIVE DATE NOTE: At 63 FR 15272, Mar. 30, 1998, § 58.47 was amended by revising the introductory text of paragraph (a) and revising paragraph (b), effective Apr. 29, 1998. For the convenience of the user, the superseded text is set forth as follows:

§ 58.47 Re-evaluation of environmental assesments and other environmental findings.

(a) A responsible entity must re-evaluate its environmental findings when:

* * * * *

(b) The purpose of the responsible entity's re-evaluation is to determine if the original findings are still valid. If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must amend the original findings and update its ERR by including

this re-evaluation and its determination based on its findings. 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. 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.

Subpart F—Environmental Review Process: Environmental Impact Statement Determinations

§ 58.52 Adoption of other agencies' EISs.

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

§ 58.53 Use of prior environmental impact statements.

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

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

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

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

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

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

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

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

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

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

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

§ 58.55 Notice of intent to prepare an EIS.

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

§ 58.56 Scoping process.

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

§ 58.57 Lead agency designation.

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

§ 58.59 Public hearings and meetings.

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

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

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

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

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

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

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

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

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

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

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

§ 58.60 Preparation and filing of environmental impact statements.

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

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

(1) Five copies to EPA Headquarters;

(2) Five copies to EPA Regional Office;

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

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

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

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

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

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

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

EFFECTIVE DATE NOTE: At 63 FR 15272, Mar. 30, 1998, § 58.60 was amended in paragraph (e) by removing the term "1502.2" and replacing it with the term "1505.2" effective Apr. 29, 1998.

Subpart H—Release of Funds for Particular Projects

§ 58.70 Notice of intent to request release of funds.

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

§ 58.71 Request for release of funds and certification.

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

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

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

§ 58.72 HUD or State actions on RROFs and certifications.

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

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

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

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

§ 58.73 Objections to release of funds.

HUD (or the State) will not approve the ROF for any project before 15 calendar days have elapsed from the time of receipt of the RROF and the certification or from the time specified in the notice published pursuant to § 58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However,

the objections must meet the conditions and procedures set forth in subpart H of this part. HUD (or the State) can refuse the RROF and certification on any grounds set forth in §58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

§ 58.74 Time for objecting.

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

§ 58.75 Permissible bases for objections.

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

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

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

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

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

(e) The recipient has committed funds or incurred costs not authorized by this part before release of funds and approval of the environmental certification by HUD or the State.

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

§ 58.76 Procedure for objections.

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

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

(b) Be dated when signed.

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

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

§ 58.77 Effect of approval of certification.

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

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

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

(d) *Responsibility for monitoring and training.* (1) At least once every three years, HUD intends to conduct in-depth

monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

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

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

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

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

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

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

PART 60—PROTECTION OF HUMAN SUBJECTS

AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 300v–1(b) and 3535(d).

SOURCE: 61 FR 36463, July 10, 1996, unless otherwise noted.

§60.101 Cross-reference.

The provisions set forth at 45 CFR part 46, subpart A, concerning the protection of human research subjects, apply to all research conducted, supported, or otherwise subject to regulation by HUD.

PART 70—USE OF VOLUNTEERS ON PROJECTS SUBJECT TO DAVIS-BACON AND HUD-DETERMINED WAGE RATES

Sec.

70.1 Purpose and authority.
70.2 Applicability.
70.3 Definitions.
70.4 Procedure for implementing prevailing wage exemptions for volunteers.
70.5 Procedure for obtaining HUD waiver of prevailing wage rates for volunteers.

AUTHORITY: Sec. 955, Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437(j), 5310 and 12 U.S.C. 1701q(c)(3); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 57 FR 14756, Apr. 22, 1992, unless otherwise noted.

§70.1 Purpose and authority.

(a) This part implements section 955 of the National Affordable Housing Act (NAHA), which provides an exemption from the requirement to pay prevailing wage rates determined under the Davis-Bacon Act or (in the case of laborers and mechanics employed in the operation of public housing projects, and architects, technical engineers, draftsmen and technicians employed in the development of public housing projects) determined or adopted by HUD, for volunteers employed on projects that are subject to prevailing wage rates under Title I of the Housing and Community Development Act of 1974 (including Community Development Block Grants, section 108 loan guarantees, and Urban Development Action Grants), under section 12 of the United States Housing Act of 1937 (public housing development and operation and section 8 projects), and under section 202 of the Housing Act of 1959 for elderly and handicapped housing projects prior to the effective date of the amendment of section 202 by section 801 of NAHA. This part also implements other provisions that provide an

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this paragraph to the State. Simultaneously with the submission of the request, the unit of general local government must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to the State additional information supporting or opposing the request. If the State, after considering the submission and the additional data, agrees with the request, the State must provide its recommendation with supporting information to the field office.

§ 42.390 Appeals.

A person who disagrees with the recipient's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient. A person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the HUD field office (or to the State in the case of a unit of general local government funded by the State). If the full relief is not granted, the recipient shall advise the person of his or her right to seek judicial review.

PARTS 43–45 [RESERVED]

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

Subpart A—General: Federal Laws and Authorities

Sec.

50.1 Purpose, authority, and applicability.
50.2 Terms and abbreviations.
50.3 Environmental policy.
50.4 Related Federal laws and authorities.

Subpart B—General Policy: Responsibilities and Program Coverage

50.10 Basic environmental responsibility.
50.11 Responsibility of the HUD approving official.

Subpart C—General Policy: Decision Points

50.16 Decision points for policy actions.
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Subpart D—General Policy: Environmental Review Procedures

50.18 General.
50.19 Categorical exclusions not subject to the Federal laws and authorities cited in §50.4.
50.20 Categorical exclusions subject to the Federal laws and authorities cited in §50.4.
50.21 Aggregation.
50.22 Environmental management and monitoring.
50.23 Public participation.
50.24 HUD review of another agency's EIS.

Subpart E—Environmental Assessments and Related Reviews

50.31 The EA.
50.32 Responsibility for environmental processing.
50.33 Action resulting from the assessment.
50.34 Time delays for exceptional circumstances.
50.35 Use of prior environmental assessments.
50.36 Updating of environmental reviews.

Subpart F—Environmental Impact Statements

50.41 EIS policy.
50.42 Cases when an EIS is required.
50.43 Emergencies.

AUTHORITY: 42 U.S.C. 3535(d) and 4332; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

SOURCE: 61 FR 50916, Sept. 27, 1996, unless otherwise noted.

Subpart A—General: Federal Laws and Authorities

§ 50.1 Purpose, authority, and applicability.

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

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

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

(d) These regulations apply to all HUD policy actions (as defined in §50.16), and to all HUD project actions (see §50.2(a)(2)). Also, they apply to projects and activities carried out by recipients subject to environmental policy and procedures of 24 CFR part 58, when the recipient that is regulated under 24 CFR part 58 claims the lack of legal capacity to assume the Secretary's environmental review responsibilities and the claim is approved by HUD or when HUD determines to conduct an environmental review itself in place of a nonrecipient responsible entity. For programs, activities or actions not specifically identified or when there are questions regarding the applicability of this part, the Assistant Secretary for Community Planning and Development shall be consulted.

§50.2 Terms and abbreviations.

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

The following definitions also apply to this part:

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

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

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

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

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

CEQ—Council on Environmental Quality

EA—Environmental Assessment

EIS—Environmental Impact Statement

FONSI—Finding of No Significant Impact

HUD—Department of Housing and Urban Development

NEPA—National Environmental Policy Act

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

§50.3 Environmental policy.

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

(b) The HUD approving official shall consider environmental and other Departmental objectives in the decision-making process.

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

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

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

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

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

(h) For HUD grant programs in which the funding approval for an applicant's

program must occur before the applicant's selection of properties, the application shall contain an *assurance* that the applicant agrees to assist HUD to comply with this part and that the applicant shall:

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

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

(3) Not acquire, rehabilitate, convert, lease, repair or construct property, nor commit or expend HUD or local funds for these program activities with respect to any eligible property, until HUD approval of the property is received.

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

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

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

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

§ 50.4 Related Federal laws and authorities.

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

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

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

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

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

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

(2) HUD Procedure for the Implementation of Executive Order 11988 (3 CFR, 1977 Comp., p. 117)—24 CFR part 55, Floodplain Management.

(3) Executive Order 11990 (Protection of Wetlands), (3 CFR, 1977 Comp., p. 121).

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

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

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

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

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

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

(h) *Air quality.* The Clean Air Act (42 U.S.C. 7401 *et seq.*), as amended. (See 40 CFR parts 6, 51, and 93.)

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

(2) The Comprehensive Environmental Response, Compensation, and

Liability Act of 1980 (42 U.S.C. 9601 *et seq.*), as amended.

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

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

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

Subpart B—General Policy: Responsibilities and Program Coverage

§50.10 Basic environmental responsibility.

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

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

§50.11 Responsibility of the HUD approving official.

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

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

Subpart C—General Policy: Decision Points

§50.16 Decision points for policy actions.

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

§50.17 Decision points for projects.

Either an EA and FONSI or an EIS for individual projects shall be completed before the applicable program decision points below for projects not meeting the criteria of §50.20. Compliance with applicable authorities cited in §50.4 shall be completed before the applicable program decision points below unless the project meets the criteria for exclusion under §50.19.

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

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

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

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

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

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

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

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

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

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

Subpart D—General Policy: Environmental Review Procedures

§ 50.18 General.

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

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

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

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

(2) Information and financial advisory services.

(3) Administrative and management expenses.

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

(5) Inspections and testing of properties for hazards or defects.

(6) Purchase of insurance.

(7) Purchase of tools.

(8) Engineering or design costs.

(9) Technical assistance and training.

(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.

(11) Tenant-based rental assistance.

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

(13) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs; however, in the case of

equipment, compliance with §50.4(b)(1) is required.

(14) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or physical expansion of existing facilities; however, in the case of equipment purchase, compliance with §50.4(b)(1) is required.

(15) Activities to assist homeownership of existing dwelling units, including closing costs and down payment assistance to home buyers, interest buydowns and similar activities that result in the transfer of title to a property; however, compliance with §§50.4 (b)(1) and (c)(1) and 51.303(a)(3) is required.

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

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

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

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

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

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

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

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

(24) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; however, compliance with §§50.4 (b)(1) and (c)(1) and 51.303(a) is required.

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

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

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

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

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

(4) Approval of handbooks, notices and other documents that provide operating instructions and procedures in

connection with activities under a FEDERAL REGISTER document that has previously been subject to a required environmental review.

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

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

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

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

[61 FR 50916, Sept. 27, 1996, as amended at 62 FR 15802, Apr. 2, 1997; 63 FR 48990, Sept. 11, 1998]

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

(a) The following actions, activities and programs are categorically excluded from the NEPA requirements of this part. They are not excluded from individual compliance requirements of other environmental statutes, Executive orders and HUD standards cited in § 50.4, where appropriate. Form HUD–4128 shall be used to document compliance. Where the responsible official determines that any item identified below may have an environmental effect because of extraordinary circumstances (40 CFR 1508.4), the requirements of NEPA shall apply (see paragraph (b) of this section).

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

(2) Rehabilitation of structures when the following conditions are met:

(i) In the case of residential buildings, the unit density is not changed more than 20 percent;

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

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

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

(4) Acquisition or disposition of, or equity loans on, an existing structure.

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

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

(b) For categorical exclusions having the potential for significant impact because of extraordinary circumstances, HUD must prepare an EA in accordance with subpart E. If it is evident without preparing an EA that an EIS is required pursuant to § 50.42, HUD should proceed directly to the preparation of an EIS in accordance with subpart F.

§ 50.21 Aggregation.

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

§ 50.22 Environmental management and monitoring.

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

(a) Be concurred in by the Field Environmental Clearance Officer (FECO) (in

the absence of a FECO, by the Program Environmental Clearance Officer in Headquarters) and any cooperating agencies;

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

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

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

§ 50.23 Public participation.

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

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

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

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

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

§ 50.24 HUD review of another agency's EIS.

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

Subpart E—Environmental Assessments and Related Reviews

§ 50.31 The EA.

(a) Form HUD–4128—Environmental Assessment and Compliance Findings for the Related Laws—is the EA form to be used for analysis and documentation by HUD for projects and activities under subpart E. The Departmental Environmental Clearance Officer shall approve the issuance of equivalent formats, if Form HUD–4128 does not meet specific program needs.

(b) The program representative shall obtain interdisciplinary assistance from professional experts and other HUD staff as needed. Additional information may also be requested of the sponsor/applicant. HUD is responsible for assessing and documenting the extent of the environmental impact.

§ 50.32 Responsibility for environmental processing.

The program staff in the HUD office responsible for processing the project application or recommending a policy action is responsible for conducting the compliance finding, EA, or EIS. The collection of data and studies as part of the information contained in the environmental review may be done by an applicant or the applicant's contractor. The HUD program staff may use any information supplied by the applicant or contractor, provided HUD independently evaluates the information, will be responsible for its accuracy, supplements the information, if necessary, to conform to the requirements of this

part, and prepares the environmental finding. Assessments for projects over 200 lots/dwelling units or beds shall be sent to the Field Environmental Clearance Officer (FECO) or, in the absence of a FECO, to the Program Environmental Clearance Officer in Headquarters for review and comment.

§ 50.33 Action resulting from the assessment.

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

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

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

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

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

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

§ 50.34 Time delays for exceptional circumstances.

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

(1) When the proposed action is, or is closely similar to, one which normally requires the preparation 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 a draft EIS, that the proposed action will not have a significant impact on the human environment; or

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

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

§ 50.35 Use of prior environmental assessments.

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

§ 50.36 Updating of environmental reviews.

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

Subpart F—Environmental Impact Statements

§ 50.41 EIS policy.

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

§ 50.42 Cases when an EIS is required.

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

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

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

(2) Would remove, demolish, convert, or substantially rehabilitate 2,500 or more existing housing units (but not

including rehabilitation projects categorically excluded under §50.20), or which would result in the construction or installation of 2,500 or more housing units, or which would provide sites for 2,500 or more housing units.

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

§50.43 Emergencies.

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

PART 51—ENVIRONMENTAL CRITERIA AND STANDARDS

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

SOURCE: 44 FR 40861, July 12, 1979, unless otherwise noted.

Subpart A—General Provisions

§51.1 Purpose.

The Department of Housing and Urban Development is providing program Assistant Secretaries and administrators and field offices with environmental standards, criteria and guidelines for determining project acceptability and necessary mitigating measures to insure that activities assisted by the Department achieve the goal of a suitable living environment.

§51.2 Authority.

This part implements the Department's responsibilities under: The National Housing Act (12 U.S.C. 1701 *et seq.*); sec. 2 of the Housing Act of 1949 (42 U.S.C. 1441); secs. 2 and 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3531 and 3535(d)); the National Environmental Policy Act of 1969 (42 U.S.C. 4321); and the other statutes that are referred to in this part.

[61 FR 13333, Mar. 26, 1996]

§51.3 Responsibilities.

The Assistant Secretary for Community Planning and Development is responsible for administering HUD's environmental criteria and standards as set forth in this part. The Assistant

ONAP Notice

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Assistant Secretary for Public and Indian Housing
Office of Native American Programs
WASHINGTON, D.C. 20410-5000

Special Attention of:

NOTICE PIH-99-37 (ONAP)

Field ONAP Administrators and Staff
Field Environmental Officers
IHBG Recipients

Issued: August 19, 1999
Expires: August 31, 2000

Cross Reference: 24 CFR 1000.20(a)

SUBJECT: Indian Housing Block Grant Program: Guidance and Procedures If Tribes Do Not Assume Environmental Review Responsibilities under 24 CFR Part 58

I. Purpose

The purpose of this Notice is to describe the responsibilities of the recipient and of the HUD Area Office of Native American Programs (ONAP) if the tribe does not assume environmental review responsibilities under 24 CFR Part 58--Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities. This Notice also defines the information (see **Appendix A**) to be provided by recipients to the HUD Area ONAP Administrator for compliance with environmental review responsibilities under 24 CFR Part 50--Protection and Enhancement of Environmental Quality (hereafter Part 50). The authority for Indian Housing Block Grant (IHBG) environmental review is Section 105 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4115).

The Indian Housing Plan (IHP) submitted by, or on behalf of the Tribe, indicates when the Tribe selects HUD to fulfill the environmental review responsibilities for the IHBG assisted activities under the provisions of Part 50. As stated in §1000.20(a) of the program regulations for the IHBG Program, a HUD environmental review must be completed for any IHBG activities not excluded from review under §50.19(b) **before** a recipient may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds used in conjunction with such IHBG assisted activities with respect to the property.

Tribes (or Tribally Designated Housing Entities (TDHEs)) that select HUD to fulfill the environmental review responsibility submit an **environmental assurance** in accord with §50.3(h).

This Notice uses the terms and thresholds in Part 50 to identify when a particular type of activity is subject to compliance with environmental review procedures. This Notice does not address the eligibility of any activity under the IHBG program. Affordable housing activities that are eligible for IHGB funding are set forth in Section 202 of NAHASDA.

II. Responsibilities

A. Recipient's environmental responsibility

Recipients shall:

(1) provide an **environmental assurance** in their Indian Housing Plan;

(2) supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by Part 50;

(3) carry out mitigating measures required by HUD or select an alternate eligible property;

(4) not acquire, rehabilitate, convert, lease, repair or construct property, nor commit or expend HUD or local funds for these program activities with respect to any eligible property until HUD approval of the property is received.

Definitions: The term "local funds" refers to any nonfederal funds. The term "HUD approval" means environmental approval by the HUD Area ONAP Administrator or his/her designee.

In submitting data to HUD, recipients may use the sample provided in the **Appendix A**, or develop and use an equivalent method. To the extent possible, recipients are to aggregate activities for a single evaluation by the Area ONAP in whose jurisdiction the project is located.

Recipients are to provide separate data for each property or community area. If available, recipients also may provide HUD with previously issued environmental reviews prepared by other local, State, or Federal agencies for the subject property. Recipients are encouraged to obtain outside information at the earliest possible stage. A recipient's failure to provide all necessary and required information in a timely manner may delay the environmental review process and thereby the implementation of the recipient's affordable housing activities.

A recipient's IHBG funds may be used to obtain the environmental information that the recipients are responsible for supplying to the HUD Field Office under this guidance. There is no requirement for an environmental review for the use of these funds for such purpose. Section 50.19(b)(1) and (3) respectively exclude from environmental review procedures both "environmental and other studies" as well as "administrative and management costs." This exclusion extends to the costs of environmental consultants engaged by the recipient and/or payments to local governments for this service.

B. HUD Area ONAP Administrator and staff responsibilities

The Area ONAP Administrator shall serve as the "HUD approving official" as defined in §50.2 for the IHBG program within the HUD field office jurisdiction. The responsibilities of the Area ONAP Administrator and staff are stated in **Appendix B**.

III. Activities Not Subject to Environmental Review

A. Documentation is not required.

Except in extraordinary circumstances, documentation is **not** required for activities that do not require environmental review (reference §50.19). The activities (1) through (12) listed below are categorically excluded from the environmental assessment required by the National Environmental Policy Act (NEPA) and these activities are also not subject to the compliance requirements of related environmental laws and authorities listed in §50.4. Recipients may proceed with any of these activities identified in its IHP without the environmental approval of HUD, unless there are other issues or conditions of funding approval not related to environmental review which must be resolved or met before implementation is allowed. If you have any questions regarding whether or not an activity identified in your IHP is subject to environmental review, contact the Area ONAP Administrator or his/her designee before you commit IHBG, local or other funds to the activity.

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

(2) Information and financial advisory services;

(3) Administrative and management expenses;

(4) Public and supportive services that will not have a physical impact or result in any physical changes;

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

(6) Purchase of insurance;

(7) Purchase of tools;

(8) Engineering or design costs;

(9) Technical assistance and training;

(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;

(11) Tenant-based rental assistance;

(12) Operating costs including maintenance, security, operation, utilities, furnishings, supplies, staff training and recruitment and other incidental costs; and

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

B. Limited documentation is required.

Limited documentation is required for certain activities. Even though these activities do not require environmental review, compliance with certain laws must be documented. Certain affordable housing activities are categorically excluded from an environmental assessment required by NEPA (§50.19) and these activities are not generally subject to the compliance requirements of the Federal laws and authorities cited in §50.4, except as noted below. The activities (1) and (2) listed below require a finding of compliance with some of the laws or authorities and therefore HUD approval prior to implementation.

(1) Activities to assist homeownership of existing dwelling units, including closing costs and downpayment assistance to homebuyers, interest buydowns and similar activities that result in transfer of title to the property (referenced in §50.19(b)(15)). These activities are subject to the requirements of: the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128) as amended by the National Flood Insurance Reform Act of 1994; the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501 et. seq.); and 24 CFR 51.303(a)(3) Airport Runway Clear Zones and Clear Zones.

(2) Equipment purchase (§50.19(b)(13)) as part of operating costs) is subject to compliance with the requirements of: the Flood Disaster Protection Act of 1973 as amended by the National Flood Insurance Reform Act of 1994. If equipment is Federally-assisted and located within the special flood hazard area, flood insurance is required.

IV. Activities Subject to Environmental Review (reference §§50.20, 50.31, and 50.42)

A. The following activities are subject to environmental review.

(1) Any activity that may have a significant impact to the human environment including: (a) new construction, (b) conversion of land use (including demolition) from non-residential to residential **or** from residential to non-residential use; and (c) acquisition of undeveloped land including acquisition for future development;

(2) Major rehabilitation and improvement of existing structures;

(3) Minor rehabilitation and repair of existing structures;

(4) Acquisition of existing structures; and

(5) Leasing or rental assistance involving existing structures.

B. Qualified data sources

Recipients are encouraged to obtain outside information at the earliest possible stage. The sample provided in **Appendix A** (or an equivalent method) should be used for providing HUD with the information pertaining to compliance with the Federal environmental laws and authorities. Information provided by recipients must be from a qualified data source.

Definition: a qualified data source may include any Federal, State, local, or tribal agency with expertise or experience in environmental protection or any other source qualified to provide reliable information on the particular subject. One letter from a qualified source could possibly provide threshold information for several of the applicable Federal environmental laws and authorities.

C. Federal environmental laws and authorities that apply to various IHBG activities

(1) Leasing or rental assistance involving existing structures:

Under Part 50, leasing or rental assistance involving existing housing and non-residential properties is generally subject only to applicable authorities for properties located within coastal barrier resources, contaminated sites, flood prone or wetland locations, or for project-based leasing activities. IHBG rental assistance under section 202(3) under Housing Services (25 U.S.C. 4132) would fall into this category. The use of IHBG assistance to make available affordable housing by subsidizing rental payments other than tenant-based requires that the proposed property to be used for rental assistance be in compliance with the above mentioned Federal laws and authorities. Refer to section G(1) of Appendix A.

(2) Acquisition of existing structures:

Acquisition of existing structures is subject to the same authorities as lease activities as well as generally to the applicable authorities for properties requiring flood insurance protection, or located within clear or accident potential zones of airports and airfields. IHBG assistance for real property acquisition under section 202(2) would fall into this category, if it were limited to acquisition of existing structures and conformed with §50.20(a)(4). Refer to section G(2) of Appendix A.

(3) Minor rehabilitation[1] and repair of existing structures:

[1] Minor rehabilitation means proposed fixing and building repair: (i) where the estimated cost of the work is less than 75 percent of the property value after completion; (ii) that does not involve changes in land use from residential to nonresidential, or from nonresidential to residential; and (iii) that does not increase unit density by more than 20 percent.

Minor rehabilitation or repair activities are subject to the same authorities as lease and acquisition of existing structures as well as to the applicable authority for properties that are historic or affect a historic property. This also includes archeological and cultural resources. IHBG assistance for moderate rehabilitation under section 202(2) would fall into this category, if it conformed with the thresholds for minor rehabilitation in §50.20(a)(2). Refer to section G(3) of Appendix A.

(4) For new construction, conversion, acquisition of vacant land (including acquisition for future development) and for the major rehabilitation and improvement of existing structures:

(a) **Individual actions under §50.20(a)(3):** Individual actions cover new construction or acquisition of land for development of up to four housing units **or** for five or more units of housing on scattered sites where the housing sites are more than 2,000 feet apart and there are not more than four units on any one site. Refer to section G(4) of Appendix A. Except in extraordinary circumstances, an environmental assessment for compliance with NEPA is **not** required for "individual actions," however "individual actions" are subject to compliance with other environmental reviews under the applicable Federal laws and authorities cited in §50.4.

(b) **Other actions:** For new construction (other than for "individual actions"), for conversion of land use (including demolition) from nonresidential to residential (or from residential to nonresidential), for the acquisition of vacant land for future development, or for the major rehabilitation and improvement of existing structures,-- an **environmental assessment** is required for compliance with NEPA and all applicable Federal laws and authorities cited in §50.4. IHBG assistance for new construction, reconstruction, site improvement, development of utilities and utility services, conversion and demolition under section 202(2) would fall into this category. Also, IHBG assistance for substantial rehabilitation would fall into this category if it does not meet the criteria for categorical exclusion of minor rehabilitation in §50.20(a)(2). In addition, any activity that may have a significant impact to the human environment may require an **environmental impact statement**. Refer to section G(5) of Appendix A.

V. Environmental review: threshold determinations and compliance documentation

Each question below is numbered as it appears in section G of Appendix A or equivalent.

Question #1: Is the property located within designated coastal barrier resources?

Threshold: Recipients are **prohibited** by the Coastal Barrier Resources Act, as amended, (16 U.S.C. 3501 et seq.) from using Federal financial assistance for properties in their IHBG program if the properties are located within designated coastal barriers of the Atlantic Ocean, Gulf of Mexico, or the Great Lakes.

Documentation: Recipients are to select either **A** or **B** for the condition that best describes their project and report the option selected in Appendix A or equivalent.

A. The recipient states that its program operates in an area or community that does not contain any shores along the Atlantic Ocean, the Gulf of Mexico, or the Great Lakes.

B. For a recipient whose program operates in an area or community that does contain shores along the Atlantic Ocean, the Gulf of Mexico, or the Great Lakes, the recipient provides HUD with a finding made by a qualified source based upon the official map issued by the Department of the Interior or the flood insurance rate maps (FIRM) issued by the Federal Emergency Management Agency stating that the recipient's proposed property or project is not located within designated coastal barrier resources. The map panel number must be cited.

Example: The finding is that the coastal property is not located within designated coastal barrier resources as shown on FIRM map for Cameron County, TX, community-panel number 480101 0005 A, map revised March 18, 1991.

Question #2: Is the property contaminated by toxic chemicals or radioactive materials?

Threshold: HUD policy, as described in § 50.3(i), provides that "(1)...all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property. (2) HUD environmental review of multifamily and non-residential properties shall include evaluation of previous uses of the site and other evidence of contamination on or near the site, to assure that occupants of proposed sites are not adversely affected by the hazards...". HUD will not approve the provision of financial assistance to residential properties located on contaminated sites that are not found to meet the criterion in (1) above. Sites known or suspected to be contaminated by toxic chemicals or radioactive materials include, but are not limited to, sites which: (i) are listed on an EPA Superfund National Priorities or CERCLA List, or equivalent State list; (ii) are located within 3,000 feet of a toxic or solid waste landfill site; or, (iii) have an underground storage tank (which is not for residential fuel).

Documentation: Recipients are to select either **A** or **B** for the condition that best describes their project and report the option selected in Appendix A or equivalent.

A. The recipient provides HUD with a finding made by a qualified data source stating that the property proposed for use in the IHBG program: (i) is not listed on an EPA Superfund National Priorities or CERCLA List, or equivalent State list; (ii) is not located within 3,000 feet of a toxic or solid waste land fill site; (iii) does not have an underground storage tank (which is not a residential fuel tank); and (iv) is not known or suspected to be contaminated by toxic chemicals or radioactive materials.

B. The recipient states that the property: (i) is listed on an EPA Superfund National Priorities or CERCLA List, or equivalent State list; (ii) is located within 3,000 feet of a toxic or solid waste land fill site; (iii) does have an underground storage tank (which is not a residential fuel tank); or (iv) is known or suspected to be contaminated by toxic chemicals or radioactive materials. For any of these conditions, the recipient must provide an American Society for Testing Materials (ASTM) Phase I report.

Question #3: Is the property located within a flood hazard area or designated wetlands?

Threshold: Projects located within a flood hazard area or designated wetland are subject to Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands) respectively. HUD's implementing regulations at 24 CFR Part 55--Floodplain Management, prescribe measures for protecting floodplains. HUD will require 30 to 60 days in most cases to perform the required processing. Generally, Part 55 does not apply to financial assistance for existing single-family properties proposed for acquisition or lease and located within the floodplain, provided (i) the existing property is not located within a floodway or coastal high hazard area; (ii) the existing property does not involve substantial improvement, which for flood hazard purposes is defined in §55.2(b)(8); and (iii) in accordance with §55.12(b)(1), the community in which the property is located is in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24); and (iv) that the existing property does not involve a critical action.

Under the provisions of these Executive Orders HUD must avoid financial support for covered activities, unless it can demonstrate that there are no practicable alternatives outside the floodplain or wetland. Where flood-free and wetland-free sites are available within the community or housing market area, these are considered practicable.

Floodplain properties covered under E.O. 11988 are properties located within a Special Flood Hazard Area (SFHA) or for critical actions, properties within the 500-year floodplain. The critical action standard applies to the proposed use of IHBG assistance to structures or facilities located within the 500-year floodplain, when the structures or facilities are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events (24 CFR Part 55).

Documentation: Recipients are to select **A** or **B** for the condition that best describes their project and report the option selected in Appendix A or equivalent.

A. The recipient provides HUD with a finding that the property is **not** located within the Special Flood Hazard Area or designated wetlands.

B. The recipient provides HUD with a finding that the property is located within the Special Flood Hazard Area or designated wetlands.

The response as to whether a property is located within a Special Flood Hazard Area or designated wetlands can be made as follows. To make a wetlands finding, the recipient would use maps issued by the Department of the Interior (DOI) for the National Inventory of Wetlands. To make a floodplain finding, the recipient would use maps issued by the Federal Emergency Management Agency (FEMA) for the National Flood Insurance Program. These findings should cite the map panel number of the official maps issued by DOI and FEMA on the basis of which the findings were made. For flood map information, see the FEMA homepage [http://www.fema.gov/nfip/fmapinfo.htm].

Note: If the property is found to be located within a SFHA, please proceed to the next section on Flood Insurance Protection and document the requisite insurance amount and period of coverage. This is not necessary if the project will consist of leasing of an existing structure that does not involve IHBG funds for repair or rehabilitation.

Question #4: Is the property in a location requiring flood insurance?

Threshold: The Flood Disaster Protection Act of 1973 requires owners of HUD-assisted SFHA properties to purchase and maintain flood insurance protection as a condition of approval of any HUD financial assistance for proposed acquisition, rehabilitation, conversion, repair or construction of structures located within the Special Flood Hazard Area. The statutorily-prescribed period and dollar amount of flood insurance is discussed below and is more stringent for grant assistance than for loan types of assistance. Recipients cannot be self-insurers under the National Flood Insurance Program. As noted above, leasing activities are not subject to this requirement unless repairs or rehabilitation is assisted with IHBG funds.

Duration of Flood Insurance Coverage: The statutory period for such coverage may extend beyond project completion. For loans, loan insurance or guaranty, coverage must be continued for the term of the loan. For grants and other non-loan forms of assistance, coverage must be continued for the life of the property, regardless of transfer of ownership of such property. The statute mandates that "The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property." (42 U.S.C 4012a(a)).

Dollar Amount of Flood Insurance Coverage: For loans, loan insurance or guaranty, the amount of coverage need not exceed the outstanding principal balance of the loan. For grants and other non-loan forms of assistance, the amount of coverage must be at least equal to the development or project cost (less estimated land cost, if any) or to the maximum limit of coverage made available by the Act with respect to the particular type of building involved (single family, other residential, or non-residential), whichever is less. The development or project cost is the total cost for acquiring, constructing, reconstructing, repairing, or improving the building. This cost must include both the Federally-assisted and non-Federally assisted portion of the cost, including any machinery, equipment, fixtures, and furnishing. If the Federal assistance includes any portion of the cost of any machinery, equipment, fixtures or furnishing, the total cost of that item must be covered. The use of IHBG assistance for proposed furnishings for housing is not eligible under section 202.

Proof of Purchase of Flood Insurance Protection: Once HUD has approved a specific SFHA property, the recipient's file for any such property shall contain "proof of purchase" of flood insurance protection. The standard documentation for compliance is the "Policy Declarations" form issued by the National Flood Insurance Program (NFIP) or issued by any property insurance company offering coverage under NFIP.

Documentation: Recipients are to estimate the amount and period of flood insurance coverage and report these in Appendix A or equivalent.

Question #5: Is the property located within an airport runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield?

Threshold: HUD policy described in 24 CFR part 51, subpart D applies to assisted properties located within Clear Zones (CZ). In the case of new construction, major or substantial rehabilitation (as defined below), and the acquisition of undeveloped land, this HUD policy also applies to properties located within Accident Potential Zones (APZ). Assisted construction or major rehabilitation of any property located on a clear zone site is prohibited for a project to be frequently used or occupied by people.

Definition: Rehabilitation (including conversion) is "major" or "substantial" when the estimated cost of the work is 75 percent or more of the property value after rehabilitation or, in the case of property in an APZ, when the work would change the use of the facility to a use that is not generally consistent with the recommendations of the Department of Defense's (DOD) "Land Use Compatibility Guidelines for Accident Potential Zones," or significantly increases the density or number of people at the site [§51.302(b)(1) and (2)].

The provision of HUD financial assistance in a CZ is allowed for properties proposed for acquisition or lease with or without minor rehabilitation or repair [§51.302 (c)]. Upon HUD approval for acquisition or lease of a property in a CZ, (a) HUD will give advance written notice to the prospective property buyer or lessor in accordance with §51.303(a)(3); and (b) a copy of the HUD notice signed by the prospective property buyer or lessor will be placed in the property file (for a sample notice, see **Appendix D**). The written notice informs the prospective buyer or lessor of the potential hazards from airplane accidents which studies have shown are more likely to occur within clear zones than in other areas around an airport/airfield and the potential by airport or airfield operators, who may wish to purchase the property at some point in the future as part of a clear zone acquisition program.

For properties located in an APZ, HUD shall determine whether the use of the property is generally consistent with DOD guidelines.

Documentation: Recipients are to select either **A** or **B** for the condition that best describes their project and report the option selected in Appendix A or equivalent.

A. The recipient provides HUD with a finding from a qualified data source which states that the property proposed for assistance is not located within 3,000 feet of a civil airport or military airfield.

B. For properties located within 3,000 feet of a civil airport or military airfield, the recipient provides HUD with a finding from the airport or airfield operator stating whether or not the property proposed for assistance is located within a runway CZ (civil airport) or CZ or APZ (military airfield). For properties that are located within a runway CZ, CZ, or APZ, recipients who propose to rehabilitate such a property are to provide HUD with estimates of the cost of the proposed rehabilitation and the property value after the rehabilitation.

Question #6: Is the property listed on, or eligible for listing on, the National Register of Historic Places; located within, or adjacent to, a historic district; or is a property whose area of potential effect includes a historic district or property?

Threshold: If a property is proposed for repair (see definition below), rehabilitation, conversion, new construction, or the acquisition of undeveloped land, a HUD determination is needed following the Department of the Interior's Standards and Guidelines for Evaluation. In consultation with the DOI-approved Tribal Historic Preservation Officer (THPO), or if there is no THPO, then with the State Historic Preservation Officer (SHPO), HUD will make a determination whether the property is: (a) listed on or eligible for listing on the National Register of Historic Places; or, (b) located within or directly adjacent to a historic district; or (c) a property whose area of potential effects includes a historic district or property. (The National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq.)

Definition: The term "repair" for historic preservation purposes does not include in-kind replacement or incidental maintenance of external and internal building features.

Historic properties and districts are subject by law to special protection and historic preservation processing which HUD must perform to comply with the regulations of the Advisory Council on Historic Preservation (36 CFR Part 800). Recipients seeking information from the THPO (or SHPO) need to allow sufficient time to obtain information from the THPO (or SHPO). The website for THPOs is [http://www2.cr.nps.gov/tribal/thpo1.htm].

Note: For properties determined to be historic properties, (or properties whose area of potential effects includes a historic district or property) even if the THPO (or SHPO) concludes that no adverse effect will occur as a result of the assisted project, HUD will require 30 to 90 days in most cases to perform the processing required by 36 CFR Part 800.

Documentation: The recipient should select either **A, B, or C** for the condition that best describes their project and report the option selected in Appendix A or equivalent.

A. The recipient proposes to use IHBG assistance for the rehabilitation, conversion, or construction of the property and provides HUD with a THPO's (or SHPO's) finding that the proposed rehabilitation, conversion, or construction: (i) will have no effect on historic properties; or (ii) will have an effect on historic properties not considered adverse.

B. The recipient proposes to use IHBG assistance for rehabilitation, conversion, or construction of the property and provides HUD with a THPO's (or SHPO's) finding that the proposed rehabilitation, conversion, or construction will have an adverse effect on historic properties.

C. The recipient provides HUD with a copy of a letter from a THPO (or SHPO) stating the reasons for not being able to provide the recipient with the requested information or finding.

Question #7: Is the property located near hazardous industrial operations handling fuels

or chemicals of an explosive or flammable nature?

Threshold: Properties that are located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature are subject to HUD safety standards (reference 24 CFR Part 51, Subpart C). However, under the IHBG program these standards would apply only if a recipient proposes: (a) construction of a building; (b) conversion of a non-residential land use to a residential land use including making an uninhabitable building habitable; (c) rehabilitation that increases the density of a residential structure by increasing the number of dwelling or rooming units; or (d) the acquisition of undeveloped land. In the case of tanks containing common liquid fuels, the requirement for an acceptable separation distance (ASD) calculation only applies to storage tanks that have a capacity of more than 100 gallons.

Documentation: Recipients are to select one of the following options **A, B, or C** that best describes the condition of the project, and report the option selected in Appendix A or equivalent.

A. The proposed project does not include: (i) the construction of a building; (ii) conversion of a non-residential land use to a residential land use including making an uninhabitable building habitable; (iii) rehabilitation that increases the density of a residential structure by increasing the number of dwelling or rooming units; or (iv) the acquisition of undeveloped land.

B. The proposed project includes: (i) construction of a building; (ii) conversion of a non-residential land use to a residential land use including making an uninhabitable building habitable; (iii) rehabilitation that increases the density of a residential structure by increasing the number of dwelling or rooming units; or, (iv) the acquisition of undeveloped land. The recipient provides HUD with a finding by a qualified data source that the property proposed for IHBG assistance is not located within the immediate vicinity of hazardous industrial operations handling fuels or chemicals of an explosive nature by citing data and maps used.

C. The recipient proposes: (i) construction of a building; (ii) conversion of a non-residential land use to a residential land use including making an uninhabitable building habitable; (iii) rehabilitation that increases the density of a residential structure by increasing the number of dwelling or rooming units; or (iv) the acquisition of undeveloped land. The recipient provides HUD with a finding made by a qualified data source which states that: (i) the proposed property is located within the immediate vicinity of hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature; (ii) the type of and scale of such hazardous industrial operations; (iii) the distance of such operations from the proposed property; (iv) a preliminary calculation of the **acceptable separation distance** (ASD) between such operations and the proposed property; and, (v) a recommendation as to whether it is safe to use the property in accord with 24 CFR Part 51, Subpart C.

Question #8: Is the site noise-impacted?

Threshold: For new construction which is to occur in high noise areas, recipients shall incorporate noise attenuation features to the extent required by HUD environmental criteria

and standards contained in Subpart B (Noise Abatement and Control) of 24 CFR Part 51. Since the acquisition of undeveloped land with IHBG funds is eligible only if the land will be used for the development of IHBG assisted housing, the standards that apply to new construction also apply to land acquisition.

Definition: High noise areas are those in which the day-night average of exterior noise exceeds 65 decibels.

Approvals in a normally unacceptable noise zone (exceeding 65 decibels but not exceeding 75 decibels) require a minimum of 5 decibels of additional noise attenuation for buildings having noise sensitive (e.g. residences) uses if the day-night average is greater than 65 decibels but does not exceed 70 decibels, or minimum of 10 decibels of additional noise attenuation if the day-night average is greater than 70 decibels but does not exceed 75 decibels.

In unacceptable noise zones (exceeding 75 decibels) the use of IHBG assistance is prohibited without the specific approval by the HUD Assistant Secretary for Community Planning and Development of the noise attenuation measures proposed to be used. It is also possible in such a circumstance that an environmental impact statement would have to be prepared.

For major rehabilitation projects and conversions located in the normally unacceptable and unacceptable noise zones, HUD actively seeks to have noise attenuation features incorporated as part of the rehabilitation to be undertaken. For those properties in unacceptable noise zones HUD strongly encourages the conversion of such properties to land uses more compatible with the high noise levels.

Documentation: Recipients are to select **A** or **B** for the condition that best describes their project and report the option selected in Appendix A or equivalent.

A. The recipient provides HUD with a finding made by a qualified data source stating that the property proposed for new construction, major rehabilitation, or conversion in its IHBG program is not located within: (i) 1,000 feet of a major noise source, road, or highway; (ii) 3,000 ft of a railroad; or, (iii) 1 mile of a civil or 5 miles of a military airfield.

B. The recipient provides HUD with a finding made by a qualified data source stating whether the property is located within a normally unacceptable or unacceptable noise zone; and, if so: (i) stating that the plans for the property proposed by the recipient for new construction, major rehabilitation or conversion activity in its IHBG program incorporate noise attenuation features in accord with HUD environmental criteria and standards contained in Subpart B (Noise Abatement and Control); and (ii) providing HUD the plans and a statement of the anticipated interior noise levels.

Question #9: Is the project consistent with the State's coastal zone management?

Threshold: The Coastal Zone Management (CZM) Act of 1972 (16 U.S.C. 1451 et seq.) only applies to new construction, major rehabilitation, conversion and substantial improvement

activities, and the acquisition of undeveloped land. Projects which can affect the coastal zone must be carried out in a manner consistent with the approved State coastal zone management program under Sec. 307 of the Coastal Zone Management Act of 1972, as amended.

Documentation: Recipients are to select either **A, B, or C** for the condition that best describes their project and report the option selected in Appendix A or equivalent.

A. The recipient states that its program operates in a community that does not contain coastal areas of the Atlantic or Pacific Oceans, the Great lakes or the Gulf of Mexico.

B. The recipient provides HUD with a finding made by a qualified source that even though the recipient operates in a community which contains coastal areas of the Atlantic or Pacific Oceans, the Great Lakes or the Gulf of Mexico, the IHBG assisted property is not located in a coastal zone, as defined in the relevant State's Coastal Zone Management Plan.

C. The proposed assisted activity would be located within a coastal zone and the recipient has provided HUD with a finding made by the State CZM agency that the proposed assisted activity is consistent with the approved State CZM program.

Question #10: Does the project affect a sole source aquifer?

Threshold: The sole source aquifer (SSA) authority only applies to proposed IHBG assisted new construction and conversion activities and the acquisition of undeveloped land. Projects which can affect aquifers designated by the EPA must be reviewed for impact on such designated aquifer sources. The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 et seq., and 21 U.S.C. 349) requires protection of drinking water systems which are the sole or principal drinking water source for an area and which, if contaminated, would create a significant hazard to public health. For information see the homepage of the EPA Office of Ground Water and Drinking Water at (http://www.epa.gov/OGWDW//ssanp.html).

Documentation: Recipients are to select either **A** or **B** for the condition that best describes their project and report the option selected in Appendix A or equivalent.

A. The recipient provides HUD with a finding made by a qualified data source stating that the property proposed for IHBG assistance is not located on nor does not affect a sole source aquifer designated by EPA.

B. For the recipient whose proposed assisted project is located on or would affect a sole source aquifer designated by the EPA, the recipient has identified the aquifer and has provided HUD with an explanation of the effect on the aquifer from a qualified data source, and/or a copy of any comments on the proposed project that the recipient has received from the EPA as well as from any State or local agency with jurisdiction for protecting the drinking water system.

Question #11: Will the project affect an endangered species?

Threshold: The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) applies only to proposed IHBG assisted new construction, conversion activities and the acquisition of undeveloped land. Section 7 of the Act sets out procedures for consultation. Consultation will be required with the Department of Interior (Fish and Wildlife Service) **or** the Department of Commerce (National Marine Fisheries Service) depending on the species involved. Consultation is required if an activity may affect a listed (endangered or threatened) species or a critical habitat. A conference is required if an action is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of a critical habitat proposed to be designated for such species.

Documentation: Recipients are to select either **A** or **B** for the condition that best describes their project and report the option selected in Appendix A or equivalent.

A. For proposed new construction, conversion, or the acquisition of undeveloped land, the recipient has provided HUD with a finding made by a qualified data source that the project is not likely to affect any listed or proposed endangered or threatened species or critical habitat. The finding shall indicate whether the project is located within a critical habitat, and if so, explain why the project is not likely to affect the species or habitat.

B. For proposed new construction, conversion, or the acquisition of undeveloped land which is likely to affect listed or proposed endangered or threatened species or a critical habitat, the recipient has provided HUD with a biological assessment prepared by a qualified data source explaining the likely effect, and/or a finding made by the Fish and Wildlife Service of the Department of the Interior **or** the National Marine Fisheries Service of the Department of Commerce stating as acceptable the proposed mitigation that the recipient will provide to protect any affected, endangered or threatened species or critical habitat.

Question #12: Does the project affect listed wild and scenic rivers?

Threshold: IHBG assisted activities are subject to the requirements of the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.). New construction, conversion, major or substantial rehabilitation, and the acquisition of undeveloped land which is proposed in areas within one mile of a listed Wild and Scenic River have the potential for impacting this natural resource. For information, see the homepage of National Park Service at [http://www.nps.gov/rivers/].

Documentation: The recipient should select **A** or **B** for the condition that best describes their project and report the option selected in Appendix A or equivalent.

A. The recipient provided HUD with a finding made by a qualified data source which states that the project is not located within one mile of a listed Wild and Scenic River or the project will not have an effect upon the natural, free flowing or scenic qualities of such a river.

B. The project is located within one mile of a listed Wild and Scenic River and the National Park Service (NPS) of the Department of the Interior indicates that the project, as proposed, will have an effect upon the natural, free flowing or scenic qualities of the river.

Question #13: Does the project affect prime and unique farmland, or other farmland of statewide or local significance?

Threshold: A finding of compliance with the requirements of the Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) must be made for assisted new construction activities and the acquisition of undeveloped land.

Documentation: Recipients are to select either **A** or **B** for the condition that best describes their project and report the option selected in Appendix A or equivalent.

A. The recipient provides HUD with a finding from a qualified data source which states that the proposed project site does not include prime or unique farmland, or other farmland of statewide or local significance as identified by the Natural Resources and Conservation Service (NRCS) of the Department of Agriculture, or the project site includes prime farmland but is located in an area committed to urban uses.

B. The proposed project site includes farmland and the recipient has requested an evaluation of land type from NRCS using form AD 1006 and has provided the resultant rating to HUD.

Question #14: Is the project within a "non-attainment" or "maintenance" area and not in conformance with the State Implementation Plan (SIP) for clean air?

Threshold: IHBG assisted activities are subject to the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.). New construction, conversion, major or substantial rehabilitation, and the acquisition of undeveloped land which are located in "non-attainment" or "maintenance" areas as determined by the EPA may need to be modified or mitigation measures developed and implemented.

Documentation: Recipients should select **A** or **B** for the condition that best describes their project and report the option selected in Appendix A or equivalent.

A. The recipient has provided HUD with a finding made by a qualified data source which states that the project is located in an "attainment area" or if located in a "non-attainment area" the project conforms with the EPA approved State Implementation Plan (SIP).

B. The proposed project is located in a "non-attainment" area and is not in conformance with the SIP.

Question #15: Is the project located in a neighborhood where the proposed action is likely to raise environmental justice issues?

Threshold: Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations") applies to low-income or minority

neighborhoods where the recipient proposes the acquisition of housing, the acquisition of land for development, and new construction. Environmental justice issues may include, but are not limited to new, continued or historically disproportionate potential for high and adverse human health and environmental effects on minority or low-income populations. The recipient will need to determine if the site or neighborhood suffers from disproportionate adverse health and environmental effects relative to the community at large. EPA has Federal oversight for this matter. Recipients seeking more detailed information about the Executive Order are encouraged to see the EPA EJ homepage at [http://es.epa.gov/oeca/oejbut.htm].

Documentation: The recipient should select **A** or **B** for the condition that best describes their project and report the option selected in Appendix A or equivalent.

A. The recipient provides HUD with a finding that the project is not likely to raise environmental justice issues.

B. The project is likely to raise environmental justice issues and has the potential for new or continued disproportionately high and adverse human health and environmental effects on minority or low-income populations. The recipient must consider mitigation or avoidance of adverse impacts from the project to the extent practicable.

Question #16: Does the recipient propose: (i) acquisition of land for development of more than four housing units on a site or five or more units of housing, where the housing sites are 2,000 feet or less apart; (ii) infrastructure; (iii) new construction other than for residential activities excluded under §50.20(a)(3); (iv) major rehabilitation of existing structures in accordance with §50.20(a)(2) that involves any of the following conditions: (a) in the case of residential buildings, an increase in the unit density of more than 20 percent; (b) changes in land use (from non-residential to residential or from residential to non-residential); or (c) estimated cost of rehabilitation that is 75 percent or more of the total estimated cost of replacement after rehabilitation; or (v) any other activity not categorically excluded under §50.20(a)?

Threshold: For the above activities, an environmental assessment is required for compliance with NEPA and the implementing regulations of the Council on Environmental Quality (CEQ). It is the policy of the Department to reject proposals which have significant adverse environmental impacts and to encourage the modification of projects in order to enhance environmental quality.

Documentation: If the answer to question #16 is "Yes," recipients are to provide information on any adverse environmental impacts that affect the project or that the project would create. Recipients are to identify any adverse impacts in terms of: (i) impact on unique natural features or areas; (ii) site suitability, access, and compatibility with surrounding development; (iii) soil stability, erosion, and drainage; (iv) nuisances and hazards (natural and built); (v) availability of water supply and sanitary sewers; (vi) availability of solid waste disposal; (vii) availability of schools, parks, recreation, and social services; (viii) availability of

emergency health care, fire and police services; and (ix) availability of commercial/retail and public transportation serving such proposed development. Recipients are to identify any significant impacts to the human environment. Report data and findings in Appendix A.

/s/ Harold Lucas
Assistant Secretary
for Public and Indian Housing

Appendix A

24 CFR PART 50 ENVIRONMENTAL REVIEWS PURSUANT TO SECTION 1000.20

THRESHOLD REVIEW FOR PROPOSED ACTIVITIES INDIAN HOUSING BLOCK GRANT (IHBG) PROGRAM

IHBG Recipient's Name:_____
IHBG Program Number:_____
Preparer's Name:_____
Phone Number:_____
FAX Number:_____
E-mail Address:_____

A. Describe the project. Indicate the number of housing units to be assisted, and/or acreage to be developed. Include street address, if applicable:

B. Attach a map of the community and identify the location of the proposed project. Attach photographs of the property and adjacent properties. Check:

(1) Map of community is attached: Yes_____ No_____

(2) Photographs of the property and adjacent properties are attached: Yes_____ No_____

C. Indicate the present and proposed use of the property:

(1) Present use:_____

(2) Proposed use:_____

D. Which of the following activities are being proposed? Check one or more. For guidance, see paragraph IV, C of the Notice.

(1) Lease or rental assistance involving existing structures_____
(2) Acquisition of existing structures_____
(3) Minor rehabilitation[1] or repair of existing structures_____

[1] Minor rehabilitation means proposed fixing and building repair: (i) where the estimated cost of the work is less than 75 percent of the total estimated cost of replacement after completion; (ii) that does not involve changes in land use from residential to nonresidential, or from nonresidential to residential; and (iii) that does not increase unit density by more than 20 percent.

(4) Major rehabilitation or improvement of existing structures_____
(5) New construction (including demolition), conversion, or infrastructure improvements including the development of utilities and services_____
(6) Acquisition of undeveloped land for future development_____

E. Report the repair/rehabilitation costs and related property values, only if repair or rehabilitation of existing structures is proposed:

(1) Property value before repair/rehab $_____
(2) Repair/rehab costs (est.) $_____
(3) Property Value after repair/rehab $_____

F. Are there any physical or environmental conditions that are or may indicate a significant impact on the human environment? Indicate: No_____, Uncertain_____, or Yes_____.

G. Respond to these questions. For guidance, see section C in IV of the Notice:

(1) For leasing or rental assistance involving of existing structures:
Complete questions #1 through 3 only.

(2) For acquisition of existing structures:
Complete questions #1 through 5 only.

(3) For minor rehabilitation and repair of existing structures:
Complete questions #1 through 6 only.

(4) Individual actions: For new construction or acquisition of land for development of up to four housing units **or** for five or more units of housing on scattered sites where the housing sites are more than 2,000 feet apart and there are not more than four units on any one site: Complete questions #1 through 15 only.

(5) Other actions: Compete questions #1 through 16 for other new construction (including demolition), acquisition of undeveloped land, conversion from one land use to another, infrastructure improvements, or major rehabilitation and improvement (unless otherwise noted) of existing buildings.

Questions:

#1 Is the property located within designated coastal barrier resources?

Indicate: A_____ or B_____
Documentation:

#2 Is the property contaminated by toxic chemicals or radioactive materials?
Indicate: A_____ or B_____
Documentation:

#3 Is the property located within a flood hazard area or designated wetland?
Indicate: A_____ or B_____
Documentation:

#4 Is the property in a location requiring flood insurance protection?
Indicate: A_____ or B_____
Estimated coverage amount of flood insurance $_____
Indicate coverage period:
Year in which flood insurance policy is to start:_____
Year in which flood insurance policy is to stop:_____

#5 Is the property located within an airport runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield?
Indicate: A_____ or B_____
Documentation:

#6 Is the property listed on, or eligible for listing on, the National Register of Historic Places; located within, or adjacent to, a historic district; or is a property whose area of potential effect includes a historic district or property?
Indicate: A_____, B_____, or C_____
Documentation:

#7 Is the property located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature? Indicate: A_____, B_____, or C_____
Documentation:

#8 Is the site noise-impacted?
Indicate: A_____ or B_____

Documentation:

#9 Is the project consistent with the State's coastal zone management?
Indicate: A_____, B_____, or C_____
Documentation:

#10 Does the project affect a sole source aquifer?
Indicate: A_____ or B_____
Documentation:

#11 Does the project affect an endangered species?
Indicate: A_____ or B_____
Documentation:

#12 Does the project affect listed wild and scenic rivers?
Indicate: A_____ or B_____
Documentation:

#13 Does the project affect prime and unique farmland, or other farmland of statewide or local significance?
Indicate: A_____ or B_____
Documentation:

#14 Is the project within a "non-attainment" area and not in conformance with the State Implementation Plan for clean air? Indicate: A_____ or B_____
Documentation:

#15 Is the project located in a neighborhood which suffers from adverse human health or environmental conditions?
Indicate: A_____ or B_____
Documentation:

#16: Does the recipient propose: (i) acquisition of land for development of more than four

housing units on any one site **or** five or more units of housing, where the housing sites are 2,000 feet or less apart; (ii) infrastructure; (iii) new construction other than for residential activities excluded under §50.20(a)(3); (iv) major rehabilitation of existing structures in accordance with §50.20(a)(2) that involves any of the following conditions: (a) in the case of residential buildings, an increase in the unit density of more than 20 percent; (b) changes in land use (from non-residential to residential or from residential to non-residential); or (c) estimated cost of rehabilitation that is 75 percent or more of the total estimated cost of replacement after rehabilitation; or (v) any other activity not categorically excluded under §50.20(a)?

Indicate: Yes_____ or No_____. If the answer is "yes," indicate which of the above activities (i), (ii), (iii), (iv) and/or (v) is proposed.

Documentation: For compliance with the National Environmental Policy Act, report data needed for HUD's preparation of the environmental assessment. Submit data on separate sheets. Indicate any potential impacts of the proposed project on the surrounding area as well as the potential impact of the surrounding area on the proposed project. Identify any adverse and beneficial impacts in terms of:

(1) Unique natural features and areas

(2) Site suitability, access, and compatibility with surrounding development

(3) Soil stability, erosion, and drainage

(4) Hazards and nuisances (both natural and built)

(5) Water supply/sanitary sewers

(6) Solid waste disposal

(7) Schools, parks, recreation, and social services

(8) Emergency health care, fire and police services

(9) Commercial/retail and transportation

(10) Other: (i) project's conformance with the locality's or tribal community's comprehensive plans and zoning; (ii) proposed displacement of residents or structures by the project; and (iii) energy conservation measures proposed for the project.

Appendix B

HUD Area ONAP Administrator and staff responsibilities

The Area ONAP Administrator shall serve as the "HUD approving official" as defined in §50.2 for the IHBG program within the HUD field office jurisdiction. The ONAP Administrator and staff shall:

(1) provide adequate outreach to the IHBG recipient and communicate with the recipient to explain the environmental review responsibilities and how the recipient may obtain the environmental information that is to be supplied to HUD;

(2) make certain that the environmental assurance is submitted with the Indian Housing Plan (IHP) accepted for processing;

(3) assure that the grant agreement contains or, as appropriate, has attached to it the following items:

(a) the environmental procedures with explicit warning that IHBG recipients are not to acquire, rehabilitate, convert, lease, repair or construct property, nor commit HUD or nonfederal funds to these IHBG program activities with respect to any eligible property, until HUD environmental approval of the property is received from the Area ONAP Administrator;

(b) an appendix containing a copy of this Notice;

(c) the name, address, phone and FAX numbers of the Area ONAP Administrator to whom recipients must supply the environmental information and from whom recipients obtain environmental approval of the project; and

(d) a schedule requirement for the recipient's submission of environmental information to the Area ONAP Administrator as set forth in this Notice;

(4) use any information (in accordance with §50.32) supplied by the recipient or its contractor, **provided** HUD independently evaluates the information, so that HUD will be responsible for its accuracy, and supplements the information (if necessary) to conform to the requirements of Part 50 and prepares the environmental finding;

(5) establish as necessary (in accordance with §50.22) commitments for environmental management and monitoring of the implementation of mitigation and other safeguards;

(6) complete the environmental review in accordance with Part 50 and upon satisfactory completion, document the Department's compliance on the "Sample Field Notes Checklist for HUD Form-4128" (April 10, 1997) and complete HUD form-4128--Environmental Assessment and Compliance Findings for the Related Laws; attach to form-4128 the information provided by the recipient or other sources used for completing the environmental analysis and findings; and obtain the signature of the ONAP Administrator as the HUD Approving Official. These

documents serve as the environmental review record, which the Area ONAP must maintain and make available upon request.

On HUD form-4128, complete both Part A (Compliance Findings for §50.4 Related Laws) **and** Part B (Environmental/Program Factors) for HUD approval of all actions except those categorically excluded from the NEPA assessment. For example, Parts A and B must be filled out for: (i) acquisition of land for developments of more than four housing units on any one site **or** five or more units of housing, where the housing sites are 2,000 feet or less apart; (ii) infrastructure including development of utilities and services; (iii) new construction other than for residential activities excluded under §50.20(a)(3); (iv) major rehabilitation of existing structures in accordance with §50.20(a)(2) that involves any of the following conditions: (a) in the case of residential buildings, an increase in the unit density of more than 20 percent; (b) changes in land use (from non-residential to residential or from residential to non-residential); or (c) estimated cost of rehabilitation that is 75 percent or more of the total estimated cost of replacement after rehabilitation; or (v) any other activity not categorically excluded under §50.20(a). Refer to section C(4)(b) in IV of the Notice. Guidance is also provided in the "Sample Field Notes Checklist for HUD Form-4128--Environmental Assessment and Compliance Findings for the Related Laws."

(7) Complete only Part A (Compliance Findings for §50.4 Related Laws) for HUD approval of the categorically excluded activities **(a)** through **(d)** listed below. However, any categorical exclusion having the potential for significant impact because of extraordinary circumstances under §50.20(b) also requires completion of both Part A (Compliance Findings for §50.4 Related Laws) **and** Part B (Environmental/Program Factors).

(a) **Individual actions under §50.20(a)(3):** Individual actions cover new construction or acquisition of land for development of up to four housing units **or** for five or more units of housing on scattered sites where the housing sites are more than 2,000 feet apart and there are not more than four units on any one site. Refer to section C(4)(a) in IV of the Notice.

(b) minor rehabilitation of existing structures (§50.20(a)(2)) when the following conditions are met: (i) in the case of residential buildings, the unit density is not changed more than 20 percent; (ii) the project does not involves changes in land use (from non-residential to residential or from residential to non-residential); and (iii) the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; or

(c) acquisition or disposition of an existing structure. .

(8) prepare the written approval letter or other typed letter, if approval is not warranted (see form letters in **Appendix C**) for the ONAP Administrator's signature and dispatch the written notification to the recipient.

Environmental Assessment and Compliance Findings for the Related Laws

U.S. Department of Housing and Urban Development

1. Project Number: _____
   HUD Program: _____
2. Date Received:

Findings and Recommendations are to be prepared **after** the environmental analysis is completed. Complete items 1 through 15 as appropriate for all pro jects. For projects requiring an environmental assessment, also complete Parts A and B. For projects categorically excluded under 24 CFR 50.20, complet Part A. Attach notes and source documentation that support the findings.

3. Project Name and Location (Street, City, County, ST):

4. Applicant Name, Address (Street, City, ST, Zip Code), and Phone:

5. ☐ Multifamily ☐ Elderly ☐ Other
   (Explain)

6. Number of: dwelling units _____;
   buildings _____; stories _____; acres _____.

7. Displacement: ☐ No ☐ Yes
   (Explain)

8. ☐ New Construction ☐ Rehabilitation ☐ Other
   (Explain) _____

9. Has an environmental report (Federal, State, or local) been used in completing this form? ☐ No ☐ Yes
   (Identify) _____

10. Planning Findings: Is the project in compliance or conformance with the following plans?
    Local zoning: ☐ Yes ☐ No ☐ Not Applicable
    Coastal Zone: ☐ Yes ☐ No ☐ Not Applicable
    Air Quality (SIP): ☐ Yes ☐ No ☐ Not Applicable
    Explain any "No" answer: _____
    Are there any unresolved conflicts concerning the use of the site?
    ☐ No ☐ Yes (explain): _____

11. Environmental Finding: (Check one)

☐ **Categorical Exclusion** is made in accordance with § 50.20 or

☐ Environmental Assessment and a **Finding of No Significant Impact** (FONSI) is made in accordance with § 50.33 or

☐ Environmental Assessment and a **Finding of Significant Impact** is made, and an Environmental Impact Statement is required in accordance with §§ 50.33 (d) and 50.41.

☐ Project is recommended for approval (list any conditions and requirements):

☐ Project is recommended for rejection (state reasons):

12. Preparer: (Signature)	Date:	13. Supervisor: (Signature)	Date:

14. Comments by Environmental Clearance Officer:
(Required for projects over 200 lots/units)

ECO:(Signature)	Date:

15. Comments (If any) by HUD Approving Official:

HUD Approving Official: (Signature)	Date:

Part A: Compliance Findings for § 50.4 Related Laws and Authorities

§ 50.4 Laws and Authorities	Project Is In Compliance		Source Documentation and Requirements for Approval
	Yes	No	
16. Coastal Barrier Resources			
17. Floodplain Management (24 CFR Part 55)			
18. Historic Preservation (36 CFR Part 800)			
19. Noise Abatement (24 CFR Part 51 Subpart B)			
20. Hazardous Operations (24 CFR Part 51 Subpart C)			
21. Airport Hazards (24 CFR Part 51 Subpart D)			
22. Protection of Wetlands (E.O. 11990)			
23. Toxic Chemicals and Radioactive Materials (§ 50.3(i))			
24. Other § 50.4 authorities *(e.g., endangered species, sole source aquifers, farmlands protection, flood insurance, environmental justice):*			

Part B: Environmental/Program Factors:

Factors	Anticipated Impact/Deficiencies			Source Documentation and Requirements for Approval
	None	Minor	Major	
25. Unique natural features and areas				
26. Site suitability, access, and compatibility with surrounding development				
27. Soil stability, erosion, and drainage				
28. Nuisances and hazards (natural and built)				
29. Water supply/sanitary sewers				
30. Solid waste disposal				
31. Schools, parks, recreation, and social services				
32. Emergency health care, fire and police services				
33. Commercial/retail and transportation				
34. Other				

Appendix C

REPLY TO RECIPIENT REGARDING HUD ENVIRONMENTAL APPROVAL

[Type on HUD Area ONAP stationery]

Dear recipient:

We have reviewed the information that you supplied to us in your letter of (month, day, year) requesting environmental processing under the Indian Housing Block Grant (IHBG) Program for tribes not assuming environmental responsibilities under 24 CFR Part 58.

[Type the appropriate option]

[Option 1: HUD approval]

The following property (or neighborhood area) listed in your submission does not exceed any of the thresholds that activate the Federal environmental laws and authorities. Therefore HUD approves the use of this property (or neighborhood area) in your local IHBG program. You may proceed to commit or expend IHBG grant funds and non-HUD funds to undertake property acquisition, rehabilitation, conversion, leasing, repair or construction for this property (or properties within this neighborhood area).

[Option 2: HUD environmental approval with special conditions]

The following property (or neighborhood area) listed in your submission exceeds one or more of the thresholds that activate the Federal environmental laws and authorities, and it was necessary for us to perform a compliance review. We approve the use of this property (or neighborhood area) in your local IHBG program. You may proceed to commit or expend IHBG grant funds and non-HUD funds to undertake property acquisition, rehabilitation, conversion, leasing, repair or construction for this property (or properties within this neighborhood area) under the following specified conditions: (explain the specified conditions).

[Option 3: HUD request for additional information to perform either the threshold determination or the compliance review, or both]

The following property (or neighborhood area) appears to exceed one or more of the thresholds that activate the Federal environmental laws and authorities. Therefore, (we request that you provide the following necessary information so that we may perform the threshold determination) or (a compliance review is required and significantly more time will be needed for us to complete this review). You are prohibited from committing or expending IHBG funds and non-HUD funds to undertake property acquisition, rehabilitation, conversion, leasing, repair or construction with respect to any eligible property (or neighborhood area),

until HUD approval is received for the specific property (or neighborhood area). If you wish to remove this property (or neighborhood area) from further consideration, please call us as soon as possible. For this property (or neighborhood area), the following action is required (explain action required).

[Option 4: HUD disapproval]

The following property (or neighborhood area) exceeds one or more of the thresholds that activate the Federal environmental laws and authorities, and for the following reasons HUD disapproves the use of this property (or neighborhood area) in your local IHBG program. You are prohibited from committing or expending IHBG funds to undertake property acquisition, rehabilitation, conversion, leasing, repair or construction with respect to this property (or neighborhood area). For this property (or neighborhood area), the specific reasons for this disapproval are the following: (explain reasons).

For further information regarding this review, please contact [type the name of ONAP staff person processing the request, his/her phone number and extension, office hours, FAX number, and e-mail address].

Yours truly,

Administrator
Office of Native American Programs

cc:
File: Environmental Review Record
Area IHBG Grants Administration
Beneficiary Tribe (if different than recipient)

Appendix D

NOTICE TO PROSPECTIVE BUYERS OF PROPERTIES LOCATED IN RUNWAY CLEAR ZONES AND CLEAR ZONES

[In accordance with 24 CFR 51.303(a)(3), this Notice must be given to anyone interested in using HUD assistance, subsidy or insurance to buy an existing property which is located in either a runway Clear Zone[1] at a civil airport or a Clear Zone at a military installation. HUD staff should fill out the area shown in parentheses below. **The original signed copy of the Notice to Prospective Buyers must be maintained as part of the HUD project file on this action.**]

The property which you are interested in purchasing at (street address, city, state, zip code) is located in the Runway Clear Zone/Clear Zone for (provide the name of the airport/airfield, city, state).

Studies have shown that if an aircraft accident were to occur, it is more likely to occur within the Runway Clear Zone/Clear Zone than in other areas around the airport /airfield. Please note that we are not discussing the chances that an accident will occur, only where one is most likely to occur.

You should also be aware that the airport/airfield operator may wish to purchase the property at some point in the future as part of a clear zone acquisition program. Such programs have been underway for many years at airports and airfield across the country. We cannot predict if or when this might happen since it is a function of many factors, particularly the availability of funds but it is a possibility.

We want to bring this information to your attention. Your signature on the space below indicates that you are now aware that the property you are interested in purchasing is located in a Runway Clear Zone/Clear Zone.

_____ _____

Signature of prospective buyer Date

_____

Typed or printed name of prospective buyer

[1] Also referred to as runway protection zone.

D. 24 CFR Part 51

Appendix D: 24 CFR Part 51

including rehabilitation projects categorically excluded under §50.20), or which would result in the construction or installation of 2,500 or more housing units, or which would provide sites for 2,500 or more housing units.

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

§50.43 Emergencies.

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

PART 51—ENVIRONMENTAL CRITERIA AND STANDARDS

Subpart A—General Provisions

Sec.

51.1 Purpose.
51.2 Authority.
51.3 Responsibilities.
51.4 Program coverage.

Subpart B—Noise Abatement and Control

51.100 Purpose and authority.
51.101 General policy.
51.102 Responsibilities.
51.103 Criteria and standards.
51.104 Special requirements.
51.105 Exceptions.
51.106 Implementation.

APPENDIX I TO SUBPART B TO PART 51— DEFINITION OF ACOUSTICAL QUANTITIES

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

51.200 Purpose.
51.201 Definitions.
51.202 Approval of HUD-assisted projects.
51.203 Safety standards.
51.204 HUD-assisted hazardous facilities.
51.205 Mitigating measures.
51.206 Implementation.
51.207 Special circumstances.
51.208 Reservation of administrative and legal rights.

APPENDIX I TO SUBPART C TO PART 51—SPECIFIC HAZARDOUS SUBSTANCES
APPENDIX II TO SUBPART C TO PART 51—DEVELOPMENT OF STANDARDS; CALCULATION METHODS

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

51.300 Purpose.
51.301 Definitions.
51.302 Coverage.
51.303 General policy.
51.304 Responsibilities.
51.305 Implementation.

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

SOURCE: 44 FR 40861, July 12, 1979, unless otherwise noted.

Subpart A—General Provisions

§51.1 Purpose.

The Department of Housing and Urban Development is providing program Assistant Secretaries and administrators and field offices with environmental standards, criteria and guidelines for determining project acceptability and necessary mitigating measures to insure that activities assisted by the Department achieve the goal of a suitable living environment.

§51.2 Authority.

This part implements the Department's responsibilities under: The National Housing Act (12 U.S.C. 1701 *et seq.*); sec. 2 of the Housing Act of 1949 (42 U.S.C. 1441); secs. 2 and 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3531 and 3535(d)); the National Environmental Policy Act of 1969 (42 U.S.C. 4321); and the other statutes that are referred to in this part.

[61 FR 13333, Mar. 26, 1996]

§51.3 Responsibilities.

The Assistant Secretary for Community Planning and Development is responsible for administering HUD's environmental criteria and standards as set forth in this part. The Assistant

Secretary for Community Planning and Development may be assisted by HUD officials in implementing the responsibilities established by this part. HUD will identify these HUD officials and their specific responsibilities through FEDERAL REGISTER notice.

[61 FR 13333, Mar. 26, 1996]

§ 51.4 Program coverage.

Environmental standards shall apply to all HUD actions except where special provisions and exemptions are contained in each subpart.

Subpart B—Noise Abatement and Control

§ 51.100 Purpose and authority.

(a) It is the purpose of this subpart B to:

(1) Call attention to the threat of noise pollution;

(2) Encourage the control of noise at its source in cooperation with other Federal departments and agencies;

(3) Encourage land use patterns for housing and other noise sensitive urban needs that will provide a suitable separation between them and major noise sources;

(4) Generally prohibit HUD support for new construction of noise sensitive uses on sites having unacceptable noise exposure;

(5) Provide policy on the use of structural and other noise attenuation measures where needed; and

(6) Provide policy to guide implementation of various HUD programs.

(b) *Authority.* Specific authorities for noise abatement and control are contained in the Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*); and the General Services Administration, Federal Management Circular 75–2; *Compatible Land Uses at Federal Airfields.*

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

§ 51.101 General policy.

(a) It is HUD's general policy to provide minimum national standards applicable to HUD programs to protect citizens against excessive noise in their communities and places of residence.

(1) *Planning assistance.* HUD requires that grantees give adequate consideration to noise exposures and sources of noise as an integral part of the urban environment when HUD assistance is provided for planning purposes, as follows:

(i) Particular emphasis shall be placed on the importance of compatible land use planning in relation to airports, highways and other sources of high noise.

(ii) Applicants shall take into consideration HUD environmental standards impacting the use of land.

(2) *Activities subject to 24 CFR part 58.* (i) Responsible entities under 24 CFR part 58 must take into consideration the noise criteria and standards in the environmental review process and consider ameliorative actions when noise sensitive land development is proposed in noise exposed areas. Responsible entities shall address deviations from the standards in their environmental reviews as required in 24 CFR part 58.

(ii) Where activities are planned in a noisy area, and HUD assistance is contemplated later for housing and/or other noise sensitive activities, the responsible entity risks denial of the HUD assistance unless the HUD standards are met.

(3) *HUD support for new construction.* HUD assistance for the construction of new noise sensitive uses is prohibited generally for projects with unacceptable noise exposures and is discouraged for projects with normally unacceptable noise exposure. (Standards of acceptability are contained in § 51.103(c).) This policy applies to all HUD programs providing assistance, subsidy or insurance for housing, manufactured home parks, nursing homes, hospitals, and all programs providing assistance or insurance for land development, redevelopment or any other provision of facilities and services which are directed to making land available for housing or noise sensitive development. The policy does not apply to research demonstration projects which do not result in new construction or reconstruction, flood insurance, interstate land sales egistration, or any action or emergency assistance under disaster assistance provisions or appropriations which are provided to save

lives, protect property, protect public health and safety, remove debris and wreckage, or assistance that has the effect of restoring facilities substantially as they existed prior to the disaster.

(4) *HUD support for existing construction.* Noise exposure by itself will not result in the denial of HUD support for the resale and purchase of otherwise acceptable existing buildings. However, environmental noise is a marketability factor which HUD will consider in determining the amount of insurance or other assistance that may be given.

(5) *HUD support of modernization and rehabilitation.* For modernization projects located in all noise exposed areas, HUD shall encourage noise attenuation features in alterations. For major or substantial rehabilitation projects in the Normally Unacceptable and Unacceptable noise zones, HUD actively shall seek to have project sponsors incorporate noise attenuation features, given the extent and nature of the rehabilitation being undertaken and the level or exterior noise exposure. In Unacceptable noise zones, HUD shall strongly encourage conversion of noise-exposed sites to land uses compatible with the high noise levels.

(6) *Research, guidance and publications.* HUD shall maintain a continuing program designed to provide new knowledge of noise abatement and control to public and private bodies, to develop improved methods for anticipating noise encroachment, to develop noise abatement measures through land use and building construction practices, and to foster better understanding of the consequences of noise. It shall be HUD's policy to issue guidance documents periodically to assist HUD personnel in assigning an acceptability category to projects in accordance with noise exposure standards, in evaluating noise attenuation measures, and in advising local agencies about noise abatement strategies. The guidance documents shall be updated periodically in accordance with advances in the state-of-the-art.

(7) *Construction equipment, building equipment and appliances.* HUD shall encourage the use of quieter construction equipment and methods in population centers, the use of quieter equipment and appliances in buildings, and the use of appropriate noise abatement techniques in the design of residential structures with potential noise problems.

(8) *Exterior noise goals.* It is a HUD goal that exterior noise levels do not exceed a day-night average sound level of 55 decibels. This level is recommended by the Environmental Protection Agency as a goal for outdoors in residential areas. The levels recommended by EPA are not standards and do not take into account cost or feasibility. For the purposes of this regulation and to meet other program objectives, sites with a day-night average sound level of 65 and below are acceptable and are allowable (see Standards in §51.103(c)).

(9) *Interior noise goals.* It is a HUD goal that the interior auditory environment shall not exceed a day-night average sound level of 45 decibels. Attenuation measures to meet these interior goals shall be employed where feasible. Emphasis shall be given to noise sensitive interior spaces such as bedrooms. Minimum attenuation requirements are prescribed in §51.104(a).

(10) *Acoustical privacy in multifamily buildings.* HUD shall require the use of building design and acoustical treatment to afford acoustical privacy in multifamily buildings pursuant to requirements of the Minimum Property Standards.

[44 FR 40861, July 12, 1979, as amended at 50 FR 9268, Mar. 7, 1985; 61 FR 13333, Mar. 26, 1996]

§51.102 Responsibilities.

(a) *Surveillance of noise problem areas.* Appropriate field staff shall maintain surveillance of potential noise problem areas and advise local officials, developers, and planning groups of the unacceptability of sites because of noise exposure at the earliest possible time in the decision process. Every attempt shall be made to insure that applicants' site choices are consistent with the policy and standards contained herein.

(b) *Notice to applicants.* At the earliest possible stage, HUD program staff shall:

(1) Determine the suitability of the acoustical environment of proposed projects;

(2) Notify applicants of any adverse or questionable situations; and

(3) Assure that prospective applicants are apprised of the standards contained herein so that future site choices will be consistent with these standards.

(c) *Interdepartmental coordination.* HUD shall foster appropriate coordination between field offices and other departments and agencies, particularly the Environmental Protection Agency, the Department of Transportation, Department of Defense representatives, and the Department of Veterans Affairs. HUD staff shall utilize the acceptability standards in commenting on the prospective impacts of transportation facilities and other noise generators in the Environmental Impact Statement review process.

[44 FR 40861, July 12, 1979, as amended at 54 FR 39525, Sept. 27, 1989; 61 FR 13333, Mar. 26, 1996]

§ 51.103 Criteria and standards.

These standards apply to all programs as indicated in § 51.101.

(a) *Measure of external noise environments.* The magnitude of the external noise environment at a site is determined by the value of the day-night average sound level produced as the result of the accumulation of noise from all sources contributing to the external noise environment at the site. Day-night average sound level, abbreviated as DNL and symbolized as L_{dn}, is the 24-hour average sound level, in decibels, obtained after addition of 10 decibels to sound levels in the night from 10 p.m. to 7 a.m. Mathematical expressions for average sound level and day-night average sound level are stated in the Appendix I to this subpart.

(b) *Loud impulsive sounds.* On an interim basis, when loud impulsive sounds, such as explosions or sonic booms, are experienced at a site, the day-night average sound level produced by the loud impulsive sounds alone shall have 8 decibels added to it in assessing the acceptability of the site (see Appendix I to this subpart). Alternatively, the C-weighted day-night average sound level (L_{Cdn}) may be used without the 8 decibel addition, as indicated in § 51.106(a)(3). Methods for assessing the contribution of loud impulsive sounds to day-night average sound level at a site and mathematical expressions for determining whether a sound is classed as "loud impulsive" are provided in the Appendix I to this subpart.

(c) *Exterior standards.* (1) The degree of acceptability of the noise environment at a site is determined by the sound levels external to buildings or other facilities containing noise sensitive uses. The standards shall usually apply at a location 2 meters (6.5 feet) from the building housing noise sensitive activities in the direction of the predominant noise source. Where the building location is undetermined, the standards shall apply 2 meters (6.5 feet) from the building setback line nearest to the predominant noise source. The standards shall also apply at other locations where it is determined that quiet outdoor space is required in an area ancillary to the principal use on the site.

(2) The noise environment inside a building is considered acceptable if: (i) The noise environment external to the building complies with these standards, and (ii) the building is constructed in a manner common to the area or, if of uncommon construction, has at least the equivalent noise attenuation characteristics.

SITE ACCEPTABILITY STANDARDS

	Day-night average sound level (in decibels)	Special approvals and requirements
Acceptable	Not exceeding 65 dB(1)	None.
Normally Unacceptable	Above 65 dB but not exceeding 75 dB	Special Approvals (2) Environmental Review (3). Attenuation (4).
Unacceptable	Above 75 dB	Special Approvals (2). Environmental Review (3). Attenuation (5).

Notes: (1) Acceptable threshold may be shifted to 70 dB in special circumstances pursuant to § 51.105(a).
(2) See § 51.104(b) for requirements.
(3) See § 51.104(b) for requirements.

(4) 5 dB additional attenuation required for sites above 65 dB but not exceeding 70 dB and 10 dB additional attenuation required for sites above 70 dB but not exceeding 75 dB. (See §51.104(a).)
(5) Attenuation measures to be submitted to the Assistant Secretary for CPD for approval on a case-by-case basis.

[44 FR 40861, July 12, 1979, as amended at 49 FR 12214, Mar. 29, 1984]

§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 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.* An EIS is required prior to the approval of projects with unacceptable noise exposure. Projects in or partially in an Unacceptable Noise Zone shall be submitted to the Assistant Secretary for Community Planning and Development, or the Certifying Officer for activities subject to 24 CFR part 58, for approval. The Assistant Secretary or the Certifying Officer may waive the EIS requirement in cases where noise is the only environmental issue and no outdoor noise sensitive activity will take place on the site. In such cases, an environmental review shall be made pursuant to the requirements of 24 CFR parts 50 or 58, as appropriate.

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

§51.105 Exceptions.

(a) *Flexibility for non-acoustic benefits.* Where it is determined that program objectives cannot be achieved on sites meeting the acceptability standard of 65 decibels, the Acceptable Zone may be shifted to L_{dn} 70 on a case-by-case basis if all the following conditions are satisfied:

(1) The project does not require an Environmental Impact Statement under provisions of §51.104(b)(1) and noise is the only environmental issue.

(2) The project has received a Special Environmental Clearance and has received the concurrence of the Environmental Clearance Officer.

(3) The project meets other program goals to provide housing in proximity to employment, public facilities and transportation.

(4) The project is in conformance with local goals and maintains the character of the neighborhood.

(5) The project sponsor has set forth reasons, acceptable to HUD, as to why the noise attenuation measures that would normally be required for new construction in the L_{dn} 65 to L_{dn} 70 zone cannot be met.

(6) Other sites which are not exposed to noise above L_{dn} 65 and which meet program objectives are generally not available.

The above factors shall be documented and made part of the project file.

[44 FR 40861, July 12, 1979, as amended at 61 FR 13334, Mar. 26, 1996]

§51.106 Implementation.

(a) *Use of available data.* HUD field staff shall make maximum use of noise data prepared by others when such data are determined to be current and adequately projected into the future and are in terms of the following:

(1) *Sites in the vicinity of airports.* The noise environment around airports is described sometimes in terms of Noise Exposure Forecasts, abbreviated as NEF or, in the State of California, as Community Noise Equivalent Level, abbreviated as CNEL. The noise environment for sites in the vicinity of airports for which day-night average sound level data are not available may be evaluated from NEF or CNEL analyses using the following conversions to DNL:

DNL≈ NEF+35
DNL≈ CNEL

(2) *Sites in the vicinity of highways.* Highway projects receiving Federal aid are subject to noise analyses under the procedures of the Federal Highway Administration. Where such analyses are available they may be used to assess sites subject to the requirements of this standard. The Federal Highway Administration employs two alternate sound level descriptors: (i) The A-weighted sound level not exceeded more than 10 percent of the time for the highway design hour traffic flow, symbolized as L_{10}; or (ii) the equivalent sound level for the design hour, symbolized as L_{eq}. The day-night average sound level may be estimated from the design hour L_{10} or L_{eq} values by the following relationships, provided heavy trucks do not exceed 10 percent of the total traffic flow in vehicles per 24 hours and the traffic flow between 10 p.m. and 7 a.m. does not exceed 15 percent of the average daily traffic flow in vehicles per 24 hours:

DNL≈ L_{10} (design hour)—3 decibels
DNL≈ L_{eq} (design hour) decibels

Where the auto/truck mix and time of day relationships as stated in this section do not exist, the HUD Noise Assessment Guidelines or other noise analysis shall be used.

(3) *Sites in the vicinity of installations producing loud impulsive sounds.* Certain Department of Defense installations produce loud impulsive sounds from artillery firing and bombing practice ranges. Noise analyses for these facilities sometimes encompass sites that may be subject to the requirements of this standard. Where such analyses are available they may be used on an interim basis to establish the acceptability of sites under this standard. The Department of Defense uses day-night average sound level based on C-weighted sound level, symbolized L_{Cdn}, for the analysis of loud impulsive sounds. Where such analyses are provided, the 8 decibel addition specified in §51.103(b), is not required, and the same numerical values of day-night average sound level used on an interim basis to determine site suitability for non-impulsive sounds apply to the L_{Cdn}.

(4) *Use of areawide acoustical data.* HUD encourages the preparation and use of areawide acoustical information, such as noise contours for airports. Where such new or revised contours become available for airports (civil or military) and military installations they shall first be referred to the HUD State Office (Environmental Officer) for review, evaluation and decision on appropriateness for use by HUD. The HUD State Office shall submit revised

contours to the Assistant Secretary for Community Planning and Development for review, evaluation and decision whenever the area affected is changed by 20 percent or more, or whenever it is determined that the new contours will have a significant effect on HUD programs, or whenever the contours are not provided in a methodology acceptable under §51.106(a)(1) or in other cases where the HUD State Office determines that Headquarters review is warranted. For other areawide acoustical data, review is required only where existing areawide data are being utilized and where such data have been changed to reflect changes in the measurement methodology or underlying noise source assumptions. Requests for determination on usage of new or revised areawide data shall include the following:

(i) Maps showing old, if applicable, and new noise contours, along with brief description of data source and methodology.

(ii) Impact on existing and prospective urbanized areas and on development activity.

(iii) Impact on HUD-assisted projects currently in processing.

(iv) Impact on future HUD program activity. Where a field office has determined that immediate approval of new areawide data is necessary and warranted in limited geographic areas, the request for approval should state the circumstances warranting such approval. Actions on proposed projects shall not be undertaken while new areawide noise data are being considered for HUD use except where the proposed location is affected in the same manner under both the old and new noise data.

(b) *Site assessments.* Compliance with the standards contained in §51.103(c) shall, where necessary, be determined using noise assessment guidelines, handbooks, technical documents and procedures issued by the Department.

(c) *Variations in site noise levels.* In many instances the noise environment will vary across a site, with portions of the site being in an Acceptable noise environment and other portions in a Normally Unacceptable noise environment. The standards in §51.103(c) shall apply to the portions of a building or buildings used for residential purposes and for ancillary noise sensitive open spaces.

(d) *Noise measurements.* Where noise assessments result in a finding that the site is borderline or questionable, or is controversial, noise measurements may be performed. Where it is determined that noise measurements are required, such measurements will be conducted in accordance with methods and measurement criteria established by the Department. Locations for noise measurements will depend on the location of noise sensitive uses that are nearest to the predominant noise source (see §51.103(c)).

(e) *Projections of noise exposure.* In addition to assessing existing exposure, future conditions should be projected. To the extent possible, noise exposure shall be projected to be representative of conditions that are expected to exist at a time at least 10 years beyond the date of the project or action under review.

(f) *Reduction of site noise by use of berms and/or barriers.* If it is determined by adequate analysis that a berm and/or barrier will reduce noise at a housing site, and if the barrier is existing or there are assurances that it will be in place prior to occupancy, the environmental noise analysis for the site may reflect the benefits afforded by the berm and/or barrier. In the environmental review process under §51.104(b), the location height and design of the berm and/or barrier shall be evaluated to determine its effectiveness, and impact on design and aesthetic quality, circulation and other environmental factors.

[44 FR 40861, July 12, 1979, as amended at 61 FR 13334, Mar. 26, 1996]

APPENDIX I TO SUBPART B TO PART 51—DEFINITION OF ACOUSTICAL QUANTITIES

1. *Sound Level.* The quantity in decibels measured with an instrument satisfying requirements of American National Standard Specification for Type 1 Sound Level Meters S1.4–1971. Fast time-averaging and A-frequency weighting are to be used, unless others are specified. The sound level meter with the A-weighting is progressively less sensitive to sounds of frequency below 1,000 hertz (cycles per second), somewhat as is the ear. With fast time averaging the sound level meter responds particularly to recent sounds

almost as quickly as does the ear in judging the loudness of a sound.

2. *Average Sound Level.* Average sound level, in decibels, is the level of the mean-square A-weighted sound pressure during the stated time period, with reference to the square of the standard reference sound pressure of 20 micropascals.

Day-night average sound level, abbreviated as DNL, and symbolized mathematically as L_{dn} is defined as:

$$L_{dn} = 10 \log_{10} \left[\frac{1}{86400} \left(\int_{0000}^{0700} 10^{[L_A(t)+10]/10} dt + \int_{0700}^{2200} 10^{L_A(t)/10} dt + \int_{2200}^{2400} 10^{[L_A(t)+10]/10} dt \right) \right]$$

Time t is in seconds, so the limits shown in hours and minutes are actually interpreted in seconds. $L_A(t)$ is the time varying value of A-weighted sound level, the quantity in decibels measured by an instrument satisfying requirements of American National Standard Specification for Type 1 Sound Level Meters S1.4–1971.

3. *Loud Impulsive Sounds.* When loud impulsive sounds such as sonic booms or explosions are anticipated contributors to the noise environment at a site, the contribution to day-night average sound level produced by the loud impulsive sounds shall have 8 decibels added to it in assessing the acceptability of a site.

A loud impulsive sound is defined for the purpose of this regulation as one for which:

(i) The sound is definable as a discrete event wherein the sound level increases to a maximum and then decreases in a total time interval of approximately one second or less to the ambient background level that exists without the sound; and

(ii) The maximum sound level (obtained with slow averaging time and A-weighting of a Type 1 sound level meter whose characteristics comply with ANSI S1.4–1971) exceeds the sound level prior to the onset of the event by at least 6 decibels; and

(iii) The maximum sound level obtained with fast averaging time of a sound level meter exceeds the maximum value obtained with slow averaging time by at least 4 decibels.

[44 FR 40861, July 12, 1979; 49 FR 10253, Mar. 20, 1984; 49 FR 12214, Mar. 29, 1984]

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

AUTHORITY: 42 U.S.C. 3535(d).

SOURCE: 49 FR 5103, Feb. 10, 1984, unless otherwise noted.

§ 51.200 Purpose.

The purpose of this subpart C is to:

(a) Establish safety standards which can be used as a basis for calculating acceptable separation distances (ASD) for HUD-assisted projects from specific, stationary, hazardous operations which store, handle, or process hazardous substances;

(b) Alert those responsible for the siting of HUD-assisted projects to the inherent potential dangers when such projects are located in the vicinity of such hazardous operations;

(c) Provide guidance for identifying those hazardous operations which are most prevalent;

(d) Provide the technical guidance required to evaluate the degree of danger anticipated from explosion and thermal radiation (fire); and

(e) Provide technical guidance required to determine acceptable separation distances from such hazards.

[49 FR 5103, Feb. 10, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§51.201 Definitions.

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

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

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

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

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

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

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

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

[49 FR 5103, Feb. 10, 1984, as amended at 61 FR 5204, Feb. 9, 1996; 61 FR 13334, Mar. 26, 1996]

§51.202 Approval of HUD-assisted projects.

(a) The Department will not approve an application for assistance for a proposed project located at less than the acceptable separation distance from a hazard, as defined in §51.201, unless appropriate mitigating measures, as defined in §51.205, are implemented, or unless mitigating measures are already in place.

(b) In the case of all applications for proposed HUD-assisted projects, the Department shall evaluate projected development plans in the vicinity of these projects to determine whether there are plans to install a hazardous operation in close proximity to the proposed project. If the evaluation shows that such a plan exists, the Department shall not approve assistance for the project unless the Department obtains satisfactory assurances that adequate mitigating measures will be taken when the hazardous operation is installed.

[49 FR 5103, Feb. 10, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§51.203 Safety standards.

The following standards shall be used in determining the acceptable separation distance of a proposed HUD-assisted project from a hazard:

(a) *Thermal Radiation Safety Standard.* Projects shall be located so that:

(1) The allowable thermal radiation flux level at the building shall not exceed 10,000 BTU/sq. ft. per hr.;

(2) The allowable thermal radiation flux level for outdoor, unprotected facilities or areas of congregation shall not exceed 450 BTU/sq. ft. per hour.

(b) *Blast Overpressure Safety Standard.* Projects shall be located so that the maximum allowable blast overpressure at both buildings and outdoor, unprotected facilities or areas shall not exceed 0.5 psi.

(c) If a hazardous substance constitutes both a thermal radiation and blast overpressure hazard, the ASD for each hazard shall be calculated, and the larger of the two ASDs shall be used to determine compliance with this subpart.

(d) Background information on the standards and the logarithmic thermal radiation and blast overpressure charts that provide assistance in determining acceptable separation distances are contained in appendix II to this subpart C.

[49 FR 5103, Feb. 10, 1984, as amended at 61 FR 13334, Mar. 26, 1996]

§ 51.204 HUD-assisted hazardous facilities.

In reviewing applications for proposed HUD-assisted projects involving the installation of hazardous facilities, the Department shall ensure that such hazardous facilities are located at an acceptable separation distance from residences and from any other facility or area where people may congregate or be present. The mitigating measures listed in § 51.205 may be taken into account in determining compliance with this section.

§ 51.205 Mitigating measures.

Application of the standards for determining an Acceptable Separation Distance (ASD) for a HUD-assisted project from a potential hazard of an explosion or fire prone nature is predicated on level topography with no intervening object(s) between the hazard and the project. Application of the standards can be eliminated or modified if:

(a) The nature of the topography shields the proposed project from the hazard.

(b) An existing permanent fire resistant structure of adequate size and strength will shield the proposed project from the hazard.

(c) A barrier is constructed surrounding the hazard, at the site of the project, or in between the potential hazard and the proposed project.

(d) The structure and outdoor areas used by people are designed to withstand blast overpressure and thermal radiation anticipated from the potential hazard (e.g., the project is of masonry and steel or reinforced concrete and steel construction).

§ 51.206 Implementation.

This subpart C shall be implemented for each proposed HUD-assisted project by the HUD approving official or responsible entity responsible for review of the project. The implementation procedure will be part of the environmental review process in accordance with the procedures set forth in 24 CFR parts 50 and 58.

[61 FR 13334, Mar. 26, 1996]

§ 51.207 Special circumstances.

The Secretary or the Secretary's designee may, on a case-by-case basis, when circumstances warrant, require the application of this subpart C with respect to a substance not listed in appendix I to this subpart C that would create thermal or overpressure effect in excess of that listed in § 51.203.

[61 FR 13334, Mar. 26, 1996]

§ 51.208 Reservation of administrative and legal rights.

Publication of these standards does not constitute a waiver of any right: (a) Of HUD to disapprove a project proposal if the siting is too close to a potential hazard not covered by this subpart, and (b) of HUD or any person or other entity to seek to abate or to collect damages occasioned by a nuisance, whether or not covered by the subpart.

APPENDIX I TO SUBPART C TO PART 51—SPECIFIC HAZARDOUS SUBSTANCES

The following is a list of specific petroleum products and chemicals defined to be hazardous substances under § 51.201.

HAZARDOUS LIQUIDS

Acetic Acid	Ethyl Benzene
Acetic Anhydride	Ethyl Dichloride
Acetone	Ethyl Ether
Acrylonitrile	Gasoline
Amyl Acetate	Heptane
Amyl Alcohol	Hexane
Benzene	Isobutyl Acetate
Butyl Acetate	Isobutyl Alcohol
Butyl Acrylate	Isopropyl Acetate
Butyl Alcohol	Isopropyl Alcohol
Carbon Bisulfide	Jet Fuel and Kerosene
Carbon Disulfide	Methyl Alcohol
Cellosolve	Methyl Amyl Alcohol
Cresols	Methyl Cellosolve
Crude Oil (Petroleum)	Methyl Ethyl Ketone
Cumene	Naptha
Cyclohexane	Pentane
No. 2 Diesel Fuel	Propylene Oxide
Ethyl Acetate	Toluene
Ethyl Acrylate	Vinyl Acetate
Ethyl Alcohol	Xylene

HAZARDOUS GASES

Acetaldehyde	Liquefied Natural Gas (LNG)
Butadiene	Liquefied Petroleum Gas (LPG)
Butane	Propane
Ethene	Propylene
Ethylene	Vinyl Chloride
Ethylene Oxide	
Hydrogen	

(Primary Source: "Urban Development Siting with respect to Hazardous Commercial/Industrial Facilities," by Rolf Jensen and Associates, Inc., April 1982)

[49 FR 5105, Feb. 10, 1984; 49 FR 12214, Mar. 29, 1984]

APPENDIX II TO SUBPART C TO PART 51—DEVELOPMENT OF STANDARDS; CALCULATION METHODS

I. Background Information Concerning the Standards

(a) Thermal Radiation:

(1) *Introduction.* Flammable products stored in above ground containers represent a definite, potential threat to human life and structures in the event of fire. The resulting fireball emits thermal radiation which is absorbed by the surroundings. Combustible structures, such as wooden houses, may be ignited by the thermal radiation being emitted. The radiation can cause severe burn, injuries and even death to exposed persons some distance away from the site of the fire.

(2) *Criteria for Acceptable Separation Distance (ASD).* Wooden buildings, window drapes and trees generally ignite spontaneously when exposed for a relatively long period of time to thermal radiation levels of approximately 10,000 Btu/hr. sq. ft. It will take 15 to 20 minutes for a building to ignite at that degree of thermal intensity. Since the reasonable response time for fire fighting units in urbanized areas is approximately five to ten minutes, a standard of 10,000 BTU/hr. sq. ft. is considered an acceptable level of thermal radiation for buildings.

People in outdoor areas exposed to a thermal radiation flux level of approximately 1,500 Btu/ft² hr will suffer intolerable pain after 15 seconds. Longer exposure causes blistering, permanent skin damage, and even death. Since it is assumed that children and the elderly could not take refuge behind walls or run away from the thermal effect of the fire within the 15 seconds before skin blistering occurs, unprotected (outdoor) areas, such as playgrounds, parks, yards, school grounds, etc., must be placed at such a distance from potential fire locations so that the radiation flux level is well below 1500 Btu/ft² hr. An acceptable flux level, particularly for elderly people and children, is 450 Btu/ft² hr. The skin can be exposed to this degree of thermal radiation for 3 minutes or longer with no serious detrimental effect. The result would be the same as a bad sunburn. Therefore, the standard for areas in which there will be exposed people, e.g. outdoor recreation areas such as playgrounds and parks, is set at 450 Btu/hr. sq. ft. Areas covered also include open space ancillary to residential structures, such as yard areas and vehicle parking areas.

(3) *Acceptable Separation Distance From a Potential Fire Hazard.* This is the actual setback required for the safety of occupied buildings and their inhabitants, and people in open spaces (exposed areas) from a potential fire hazard. The specific distance required for safety from such a hazard depends upon the nature and the volume of the substance. The Technical Guidebook entitled "Urban Development Siting With Respect to Hazardous/Commercial Industrial Facilities," which supplements this regulation, contains the technical guidance required to compute Acceptable Separation Distances (ASD) for those flammable substances most often encountered.

(b) *Blast Overpressure:*

The Acceptable Separation Distance (ASD) for people and structures from materials prone to explosion is dependent upon the resultant blast measured in pounds per square inch (psi) overpressure. It has been determined by the military and corroborated by two independent studies conducted for the Department of Housing and Urban Development that 0.5 psi is the acceptable level of blast overpressure for both buildings and occupants, because a frame structure can normally withstand that level of external exertion with no serious structural damage, and it is unlikely that human beings inside the building would normally suffer any serious injury. Using this as the safety standard for blast overpressure, nomographs have been

developed from which an ASD can be determined for a given quantify of hazardous substance. These nomographs are contained in the handbook with detailed instructions on their use.

(c) *Hazard evaluation:*

The Acceptable Separation Distances for buildings, which are determined for thermal radiation and blast overpressure, delineate separate identifiable danger zones for each potential accident source. For some materials the fire danger zone will have the greatest radius and cover the largest area, while for others the explosion danger zone will be the greatest. For example, conventional petroleum fuel products stored in unpressurized tanks do not emit blast overpressure of dangerous levels when ignited. In most cases, hazardous substances will be stored in pressurized containers. The resulting blast overpressure will be experienced at a greater distance than the resulting thermal radiation for the standards set in Section 51.203. In any event the hazard requiring the greatest separation distance will prevail in determining the location of HUD-assisted projects.

The standards developed for the protection of people and property are given in the following table.

	Thermal radiation	Blast overpressure
Amount of acceptable exposure allowed for building structures.	10,000 BTU/ft² hr.	0.5 psi.
Amount of acceptable exposure allowed for people in open areas.	450 BTU/ft² hr ...	0.5 psi.

Problem Example

The following example is given as a guide to assist in understanding how the procedures are used to determine an acceptable separation distance. The technical data are found in the HUD Guidebook. Liquid propane is used in the example since it is both an explosion and a fire hazard.

In this hypothetical case a proposed housing project is to be located 850 feet from a 30,000 gallon liquid propane (LPG) tank. The objective is to determine the acceptable separation distance from the LPG tank. Since propane is both explosive and fire prone it will be necessary to determine the ASD for both explosion and for fire. The greatest of the two will govern. There is no dike around the tank in this example.

Nomographs from the technical Guidebook have been reproduced to facilitate the solving of the problem.

ASD For Explosion

Use Figure 1 to determine the acceptable separation distance for explosion.

The graph depicted on Figure 1 is predicated on a blast overpressure of 0.5 psi.

The ASD in feet can be determined by applying the quantity of the hazard (in gallons) to the graph.

In this case locate the 30,000 gallon point on the horizontal axis and draw a vertical line from that point to the intersection with the straight line curve. Then draw a horizontal line from the point where the lines cross to the left vertical axis where the ACCEPTABLE SEPARATION DISTANCE of 660 feet is found.

Therefore the ASD for explosion is 660 feet

Since the proposed project site is located 850 feet from the tank it is located at a safe distance with regards to blast overpressure.

30

ACCEPTABLE SEPARATION DISTANCE
BLAST OVERPRESSURE
(NO BLAST BARRIERS)
HAZARDOUS GAS CONTAINER

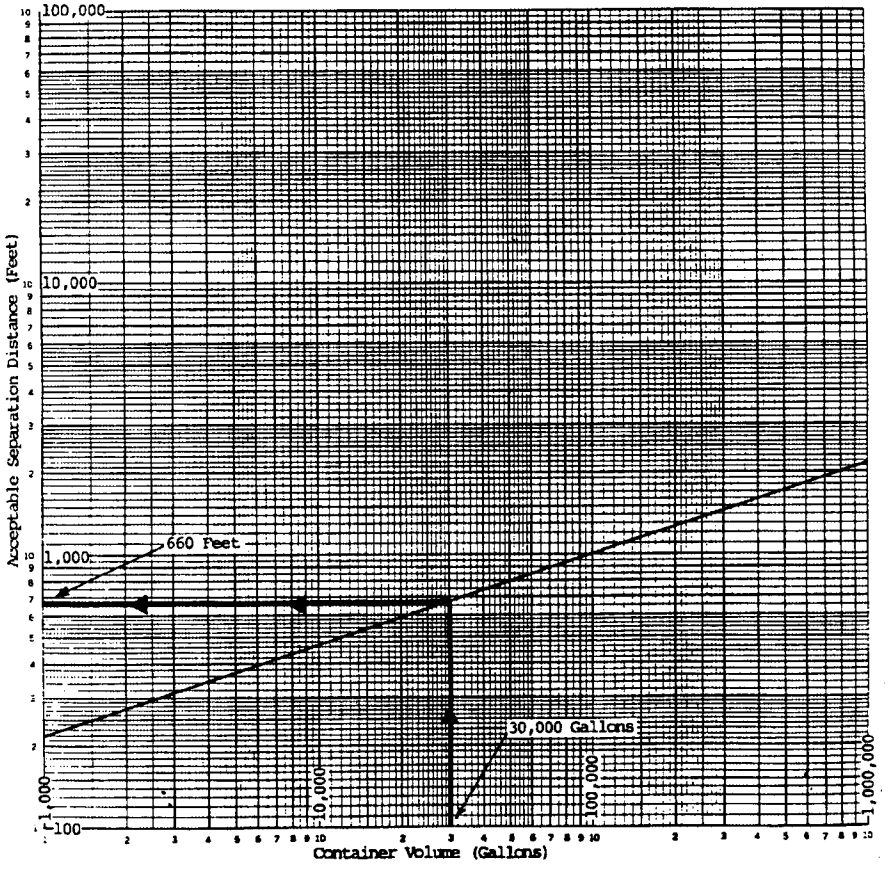

Figure 1

ASD For Fire

To determine the ASD for fire it will be necessary to first find the fire width (diameter of the fireball) on Figure 2. Then apply this to Figure 3 to determine the ASD.

Since there are two safety standards for fire: (a) 10,000 BTU/ft² hr. for buildings; and (b) 450 BTU/ft² hr. for people in exposed areas, it will be necessary to determine an ASD for each.

To determine the fire width locate the 30,000 gallon point on the horizontal axis on *Figure 2* and draw a vertical line to the straight line curve. Then draw a horizontal line from the point where the lines cross to the left vertical axis where the FIRE WIDTH is found to be *350 feet.*

Now locate the 350 ft. point on the horizontal axis of *Figure 3* and draw a vertical line from that point to curves 1 and 2. Then draw horizontal lines from the points where the lines cross to the left vertical axis where the ACCEPTABLE SEPARATION DISTANCES of *240 feet* for buildings and *1,150 feet* for exposure to people is found.

Based on this the proposed project site is located at a safe distance from a potential fireball. However, exposed playgrounds or other exposed areas of congregation must be at least 1,150 feet from the tank, or be appropriately shielded from a potential fireball.

(Source: HUD Handbook, "Urban Development Siting With Respect to Hazardous Commercial/Industrial Facilities.")

FIRE WIDTH - UNCONFINED SPILL
HAZARDOUS GAS CONTAINER
NOT DIKED

32

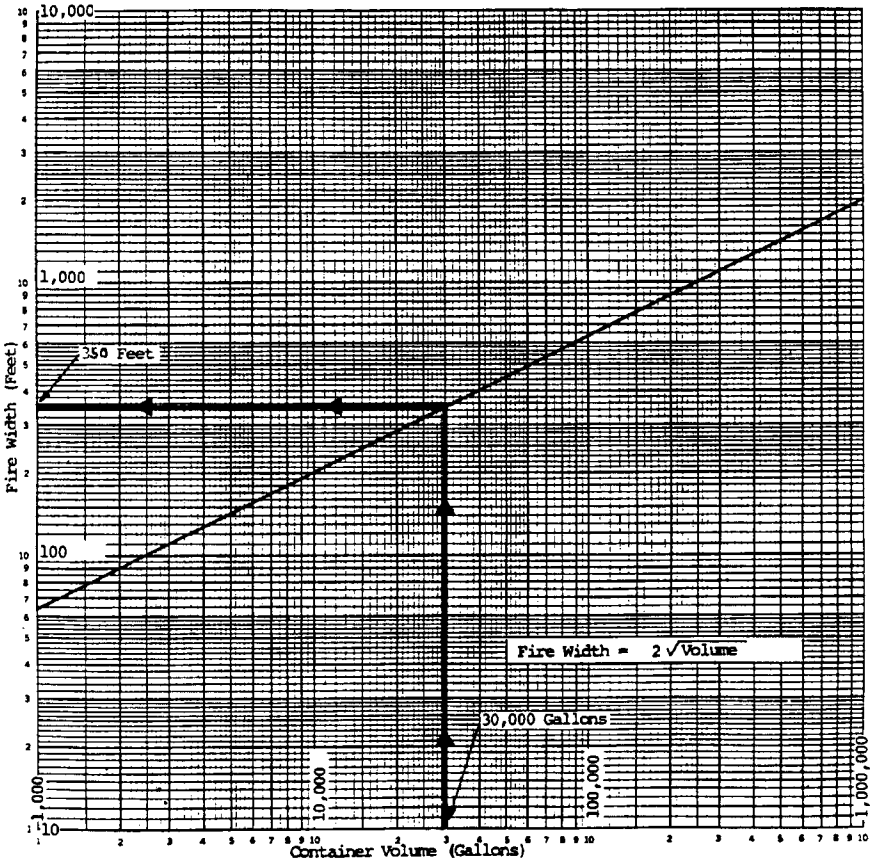

Figure 2

ACCEPTABLE SEPERATION DISTANCE
HAZARDOUS GAS CONTAINER
DIKED/UNDIKED

33

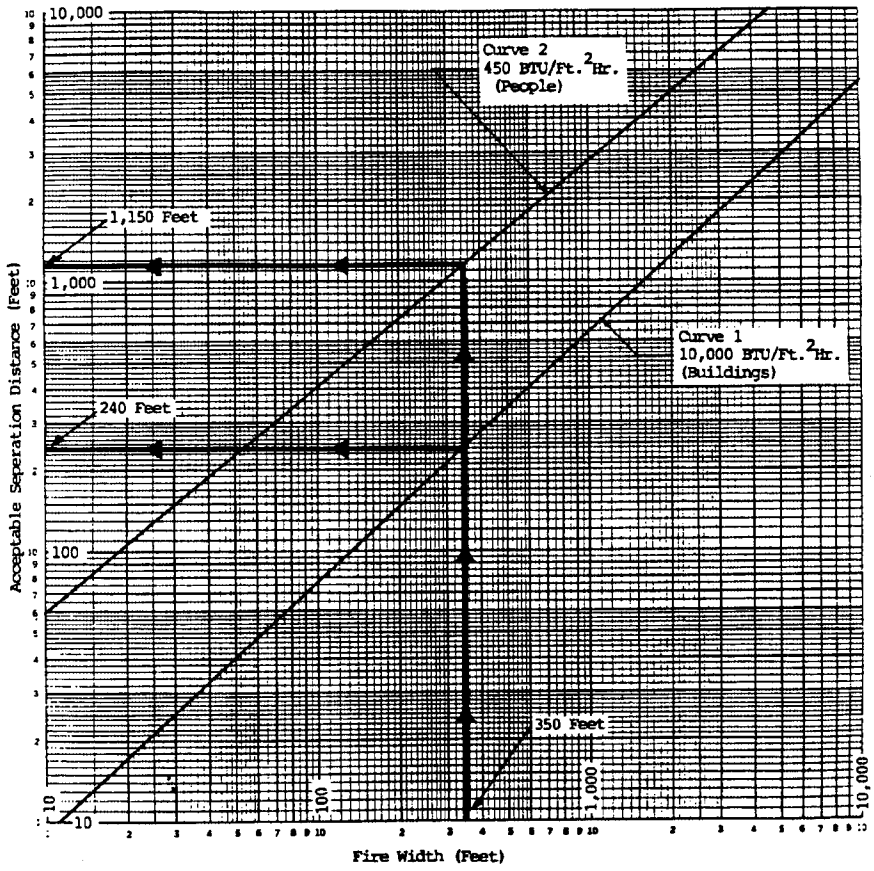

Figure 3

[49 FR 5105, Feb. 10, 1984; 49 FR 12214, Mar. 29, 1984]

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

AUTHORITY: Sec. 2, Housing Act of 1949, as amended, 42 U.S.C. 1441, affirmed by sec. 2, HUD Act of 1969, Pub. L. 90–448; sec. 7(d), HUD Act of 1965, 42 U.S.C. 3535(d); OMB, Fed'l Mgmt. Cir. 75–2: Compatible Land Uses At Federal Airfields.

SOURCE: 49 FR 880, Jan. 6, 1984, unless otherwise noted.

§ 51.300 Purpose.

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

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

§ 51.301 Definitions.

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

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

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

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

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

§ 51.302 Coverage.

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

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

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

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

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

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

(d) The policies do not apply to research or demonstration projects which do not result in new construction or reconstruction, to interstate land sales registration, or to any action or emergency assistance which is provided to save lives, protect property, protect public health and safety, or remove debris and wreckage.

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

§51.303 General policy.

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

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

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

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

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

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

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

§51.304 Responsibilities.

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

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

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

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

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

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

[61 FR 13335, Mar. 26, 1996]

§51.305 Implementation.

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

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

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

(d) The decision to approve projects in the Runway Clear Zones, Clear

Zones and Accident Potential Zones must be documented as part of the enviornmental assessment or, when no assessment is required, as part of the project file.

PART 52—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PROGRAMS AND ACTIVITIES

Sec.

52.1 What is the purpose of these regulations?
52.2 What definitions apply to these regulations?
52.3 What programs and activities of the Department are subject to these regulations?
52.4 What are the Secretary's general responsibilities under the Order?
52.5 What is the Secretary's obligation with respect to Federal interagency coordination?
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52.10 How does the Secretary make efforts to accommodate intergovernmental concerns?
52.11 What are the Secretary's obligations in interstate situations?
52.12 [Reserved]

AUTHORITY: 31 U.S.C. 6506; 42 U.S.C. 3334, 3535(d).

SOURCE: 48 FR 29216, June 24, 1983, unless otherwise noted.

§ 52.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 52.2 What definitions apply to these regulations?

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

Secretary means the Secretary of the U.S. Department of Housing and Urban Development or an official or employee of the Department acting for the Secretary under a delegation of authority.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

[48 FR 29216, June 24, 1983, as amended at 61 FR 5205, Feb. 9, 1996]

§ 52.3 What programs and activities of the Department are subject to these regulations?

The Secretary publishes in the FEDERAL REGISTER a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 52.4 What are the Secretary's general responsibilities under the Order?

(a) The Secretary provides opportunities for consultation by elected officials of those state and local governments that would provide the non-federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the Department.

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after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§52.11 What are the Secretary's obligations in interstate situations?

(a) The Secretary is responsible for—

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to §52.10 of this part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in §52.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§52.12 [Reserved]

PART 55—FLOODPLAIN MANAGEMENT

Subpart A—General

Sec.

55.1 Purpose and basic responsibility.
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55.20 Decision making process.
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55.27 Documentation.

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

SOURCE: 59 FR 19107, Apr. 21, 1994, unless otherwise noted.

Subpart A—General

§55.1 Purpose and basic responsibility.

(a) This part implements the requirements of Executive Order 11988, Floodplain Management, and employs the principles of the Unified National Program for Floodplain Management. It covers the proposed acquisition, construction, improvement, disposition, financing and use of properties located in a floodplain for which approval is required either from HUD under any applicable HUD program or from a grant recipient subject to 24 CFR part 58. This part does not prohibit approval of such actions (except for certain actions in high hazard areas), but provides a consistent means for implementing the Department's interpretation of the executive order in the project approval decision making processes of HUD and of grant recipients subject to 24 CFR part 58. The implementation of Executive Order 11988 under this part shall be conducted by HUD, for Department-administered programs subject to environmental review under 24 CFR part 50, and by authorized recipients of HUD financial assistance subject to environmental review under 24 CFR part 58.

(b) Under section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), proposed HUD financial assistance (including mortgage insurance) for acquisition or construction purposes in any "area having special flood hazards" (a flood zone designated by the Federal Emergency Management Agency (FEMA)) shall not be approved in communities identified by FEMA as eligible for flood insurance but which are not participating in the National Flood Insurance Program. This prohibition only applies to proposed HUD financial assistance in a FEMA-designated area of special flood hazard one year after the community has been formally notified by FEMA of the designation of the affected area. This prohibition is not applicable to HUD financial assistance in the form of formula grants to states, including financial assistance under the State-administered CDBG Program (24 CFR part 570, subpart I) and the State-administered Rental Rehabilitation Program (24 CFR 511.51), Emergency Shelter Grant amounts allocated to States (24 CFR parts 575 and 576), and HOME funds provided to a state under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701–12839).

(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, located in a floodway;

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

(3) Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area or is a functionally dependent use. An action will be considered to be designed for location in a coastal high hazard area if:

(i) In the case of new construction 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.

§ 55.2 Terminology.

(a) With the exception of those terms defined in paragraph (b) of this section, the terms used in this part shall follow the definitions contained in section 6 of Executive Order 11988 and in the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978) issued by the Water Resources Council; and the terms "criteria" and "Regular Program", shall follow the definitions contained in FEMA regulations at 44 CFR 59.1.

(b) The definitions of the following terms in Executive Order 11988 and related documents affecting this part are modified for purposes of this part:

(1) *Coastal high hazard area* means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) under FEMA regulations as Zone V1–30, VE, or V. (FIRMs as well as Flood Hazard Boundary Maps (FHBM) shall also be relied on for the delineation of "100-year floodplains" (§ 55.2(b)(8)), "500-year floodplains" (§ 55.2(b)(3)), and "floodways" (§ 55.2(b)(4)).

(2)(i) *Critical action* means any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend

the useful life of those structures or facilities that:

(A) Produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(B) Provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events (e.g., data storage centers, generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or

(C) Are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, e.g., persons who reside in hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers. Housing for independent living for the elderly is not considered a critical action.

(ii) Critical actions shall not be approved in floodways or coastal high hazard areas.

(3) *500-year floodplain* means the minimum floodplain of concern for Critical Actions and is the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year. (See §55.2(b)(1) for appropriate data sources.)

(4) *Floodway* means that portion of the floodplain which is effective in carrying flow, where the flood hazard is generally the greatest, and where water depths and velocities are the highest. The term "floodway" as used here is consistent with "regulatory floodways" as identified by FEMA. (See §55.2(b)(1) for appropriate data sources.)

(5) *Functionally dependent use* means a land use that must necessarily be conducted in close proximity to water (e.g., a dam, marina, port facility, water-front park, and many types of bridges).

(6) *High hazard area* means a floodway or a coastal high hazard area.

(7) *100-year floodplain* means the floodplain of concern for this part and is the area subject to a one percent or greater chance of flooding in any given year. (See §55.2(b)(1) for appropriate data sources.)

(8)(i) *Substantial improvement* means either:

(A) Any repair, reconstruction, modernization or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(*1*) Before the improvement or repair is started; or

(*2*) If the structure has been damaged, and is being restored, before the damage occurred; or

(B) Any repair, reconstruction, modernization or improvement of a structure that results in an increase of more than twenty percent in the number of dwelling units in a residential project or in the average peak number of customers and employees likely to be onsite at any one time for a commercial or industrial project.

(ii) *Substantial improvement* may not be defined to include either:

(A) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions, or

(B) Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places.

(iii) Structural repairs, reconstruction, or improvements not meeting this definition are considered "minor improvements".

§ 55.3 Assignment of responsibilities.

(a)(1) *The Assistant Secretary for Community Planning and Development* (CPD) shall oversee: (i) The Department's implementation of the order and this part in all HUD programs, and

(ii) The implementation activities of HUD program managers and grant recipients for HUD financial assistance subject to 24 CFR part 58.

(2) In performing these responsibilities, the Assistant Secretary for CPD shall make pertinent policy determinations in cooperation with appropriate program offices and provide necessary assistance, training, publications, and procedural guidance.

(b) *Other HUD Assistant Secretaries, the General Counsel, and the President of the Government National Mortgage Association (GNMA)* shall: (1) Ensure compliance with this part for all actions

under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain;

(2) Ensure that actions approved by HUD or grant recipients are monitored and that any prescribed mitigation is implemented;

(3) Ensure that the offices under their jurisdiction have the technical resources to implement the requirements of this part; and

(4) Incorporate in departmental regulations, handbooks, and project and site standards those criteria, standards, and procedures necessary to comply with the requirements of this part.

(c) *Recipient Certifying Officer.* In accordance with section 9 of Executive Order 11988, Certifying Officers of grant recipients administering activities subject to 24 CFR part 58 shall: (1) Comply with this part in carrying out HUD-assisted programs, and

(2) Monitor approved actions and ensure that any prescribed mitigation is implemented.

Subpart B—Application of Executive Order on Floodplain Management

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

(a) Where an environmental review is required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, and 24 CFR part 50 or part 58, compliance with this part shall be completed before the completion of an environmental assessment (EA) including a finding of no significant environmental impact (FONSI), or an environmental impact statement (EIS), in accordance with the decision points listed in 24 CFR 50.17 (a) through (h), or before the preparation of an EA under 24 CFR 58.40 or an EIS under 24 CFR 58.36. For types of proposed actions that are categorically excluded from National Environmental Policy Act (NEPA) requirements under 24 CFR part 50 (or part 58), compliance with this part shall be completed before the Department's initial (SAMA, conditional, etc.) approval (or the conditional commitment or approval by a grant recipient subject to 24 CFR part 58) of proposed actions in a floodplain.

(b) The categorical exclusion of certain proposed actions from environmental review requirements under NEPA and 24 CFR parts 50 and 58 (see 24 CFR 50.20 and 58.35) does not exclude those actions from compliance with this part.

§ 55.11 Applicability of subpart C decision making process.

(a) Before reaching the decision points described in § 55.10(a), HUD (for Department-administered programs) or the grant recipient (for HUD financial assistance subject to 24 CFR part 58) shall determine whether Executive Order 11988 and this part apply to the proposed action.

(b) If Executive Order 11988 applies, the approval of a proposed action or initial commitment shall be made in accordance with this part. The primary purpose of Executive Order 11988 is to "avoid direct or indirect support of floodplain development."

(c) The following table indicates the applicability, by location and type of action, of the decision making process for implementing Executive Order 11988 under subpart C of this part.

TABLE 1

Type of proposed action (new reviewable action or an amendment)	Type of proposed location			
	Floodways	Coastal high hazard areas	100-year floodplain outside high hazard area	Area between 100- and 500-year floodplain
Critical actions as defined in § 55.2(b)(2).	Critical actions not allowed.	Critical actions not allowed.	Allowed if the proposed critical action is processed under § 55.20 [1].	Allowed if the proposed critical action is processed under § 55.20 [1].

TABLE 1—Continued

Type of proposed action (new reviewable action or an amendment)	Type of proposed location			
	Floodways	Coastal high hazard areas	100-year floodplain outside high hazard area	Area between 100- and 500-year floodplain
Non-critical actions not excluded under §55.12 (b) or (c).	Allowed only if the proposed action is a functionally dependent use and processed under §55.20 [1].	Allowed only if the proposed action: (1) Is either (a) designed for location in a coastal high hazard area or (b) a functionally dependent use; and (2) is processed under §55.20 [1].	Allowed if the proposed action is processed under §55.20 [1].	Any non-critical action is allowed without processing under this part.

[1] Or those paragraphs of §55.20 that are applicable to an action listed in §55.12(a).

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

(a) The decision making steps in §55.20 (b), (c) and (g) (steps 2, 3 and 7) shall not apply to the following categories of proposed actions: (1) HUD actions involving the disposition of HUD-acquired multifamily housing projects or "bulk sales" of HUD-acquired one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24).

(2) HUD's actions under section 223(f) of the National Housing Act (12 U.S.C. 1715n(f)) for the purchase or refinancing of existing multifamily housing projects (including hospitals, nursing homes, board and care facilities, and intermediate care facilities) in communities that are in good standing under the NFIP.

(3) HUD mortgage insurance actions for the repair, rehabilitation, modernization or improvement of existing multifamily housing projects (including nursing homes, board and care facilities and intermediate care facilities) and existing one- to four-family properties, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the number of units is not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, and the footprint of the structure and paved areas is not significantly increased.

(b) The decision making process in §55.20 shall not apply to the following categories of proposed actions: (1) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway or coastal high hazard area;

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for "substantial improvement" under §55.2(b)(8);

(3) HUD actions involving the disposition of individual HUD-acquired, one- to four-family properties; and

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

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

(1) HUD-assisted exempt activities described in 24 CFR 58.34;

(2) Policy level actions described at 24 CFR 50.16 that do not involve site-based decisions;

(3) HUD's implementation of the full disclosure and other registration requirements of the Interstate Land Sales Disclosure Act (15 U.S.C. 1701—1720);

(4) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance;

(5) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain;

(6) HUD's approval of a project site, an incidental portion of which is situated in an adjacent floodplain, but only if: (i) The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, etc.) do not occupy or modify the 100-year floodplain or the 500-year floodplain (for Critical Actions);

(ii) Appropriate provision is made for site drainage; and

(iii) A covenant or comparable restriction is placed on the property's continued use to preserve the floodplain;

(7) An action for interim assistance, assistance under the section 232(i) Fire Safety Equipment Loan Insurance Program, or emergency activities involving imminent threats to health and safety, and limited to necessary protection, repair or restoration activities to control the imminent risk or damage;

(8) HUD's approval of financial assistance for a project on any site in a floodplain for which FEMA has issued:

(i) A final Letter of Map Amendment (LOMA) or final Letter of Map Revision (LOMR) that removed the property from a FEMA-designated floodplain location; or

(ii) A conditional LOMA or conditional LOMR if the HUD approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;

(9) HUD's acceptance of a housing subdivision approval action by the Department of Veterans Affairs or Farmers Home Administration in accordance with section 535 of the Housing Act of 1949 (42 U.S.C. 1490o);

(10) An action that was, on May 23, 1994, already approved by HUD (or a grant recipient subject to 24 CFR part 58) and is being implemented (unless approval is requested for a new reviewable action), provided that §§ 55.21 and 55.22 apply where the covered transactions under those sections have not yet occurred, and that any hazard minimization measures required by HUD (or a grant recipient subject to 24 CFR part 58) under its implementation of Executive Order 11988 before May 23, 1994 shall be completed;

(11) Issuance or use of Housing Vouchers, Certificates under the Section 8 Existing Housing Program, or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (*i.e.*, do not involve site-specific subsidies); and

(12) Secondary mortgage operations of the Government National Mortgage Association (GNMA).

[59 FR 19107, Apr. 21, 1994, as amended at 59 FR 33199, June 28, 1994; 62 FR 15802, Apr. 2, 1997]

Subpart C—Procedures for Making Determinations on Floodplain Management

§ 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 public is largely non-English speaking. In addition, all notices must be published in an appropriate local printed news medium, and must be sent to federal, state, and local public agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action.

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

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

(c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a floodplain (or the 500-year floodplain for a Critical Action).

(1) The consideration of practicable alternatives to the proposed site or method may include:

(i) Locations outside the floodplain (or 500-year floodplain for a Critical Action);

(ii) Alternative methods to serve the identical project objective; and

(iii) A determination not to approve any action.

(2) In reviewing practicable alternatives, the Department or a grant recipient subject to 24 CFR part 58 shall consider feasible technological alternatives, hazard reduction methods and related mitigation costs, and environmental impacts.

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

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

(1) Preparation of and participation in an early warning system;

(2) An emergency evacuation and relocation plan;

(3) Identification of evacuation route(s) out of the 500-year floodplain; and

(4) Identification marks of past or estimated flood levels on all structures.

(f) *Step 6.* Reevaluate the proposed action to determine:

(1) Whether it is still practicable in light of its exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to other floodplains, and its potential to disrupt floodplain values; and

(2) Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of the information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.

(g) *Step 7.* (1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the floodplain (or the 500-year floodplain for a Critical Action), publish a final notice that includes:

(i) The reasons why the proposal must be located in the floodplain;

(ii) A list of the alternatives considered; and

(iii) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values.

(2) In addition, the public notice procedures of §55.20(b)(1) shall be followed, and a minimum of 7 calendar days for public comment before approval of the proposed action shall be provided.

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

§ 55.21 Notification of floodplain hazard.

For HUD programs under which a financial transaction for a property located in a floodplain (a 500-year floodplain for a Critical Action) is guaranteed, approved, regulated or insured, any private party participating in the transaction and any current or prospective tenant shall be informed by HUD (or by HUD's designee, e.g., a mortgagor) or a grant recipient subject to 24 CFR part 58 of the hazards of the floodplain location before the execution of documents completing the transaction.

§ 55.22 Conveyance restrictions for the disposition of multifamily real property.

(a) In the disposition (including leasing) of multifamily properties acquired by HUD that are located in a floodplain (a 500-year floodplain for a Critical Action), the documents used for the conveyance must: (1) Refer to those uses that are restricted under identified federal, state, or local floodplain regulations; and

(2) Include any land use restrictions limiting the use of the property by a grantee or purchaser and any successors under state or local laws.

(b)(1) For disposition of multifamily properties acquired by HUD that are located in a 500-year floodplain and contain Critical Actions, HUD shall, as a condition of approval of the disposition, require by covenant or comparable restriction on the property's use that the property owner and successive owners provide written notification to each current and prospective tenant concerning: (i) The hazards to life and to property for those persons who reside or work in a structure located within the 500-year floodplain, and

(ii) The availability of flood insurance on the contents of their dwelling unit or business.

(2) The notice shall also be posted in the building so that it will be legible at all times and easily visible to all persons entering or using the building.

[59 FR 19107, Apr. 21, 1994, as amended at 59 FR 33199, June 28, 1994]

§ 55.23 [Reserved]

§ 55.24 Aggregation.

Where two or more actions have been proposed, require compliance with subpart C of this part, affect the same floodplain, and are currently under review by the Department (or by a grant recipient subject to 24 CFR part 58), individual or aggregated approvals may be issued. A single compliance review and approval under this section is subject to compliance with the decision making process in § 55.20.

§ 55.25 Areawide compliance.

(a) A HUD-approved areawide compliance process may be substituted for individual compliance or aggregated compliance under § 55.24 where a series of individual actions is proposed or contemplated in a pertinent area for HUD's examination of floodplain hazards. In areawide compliances, the area for examination may include a sector of, or the entire, floodplain—as relevant to the proposed or anticipated actions. The areawide compliance process shall be in accord with the decision making process under § 55.20.

(b) The areawide compliance process shall address the relevant executive orders and shall consider local land use planning and development controls (e.g., those enforced by the community for purposes of floodplain management under the National Flood Insurance Program (NFIP)) and applicable state programs for floodplain management. The process shall include the development and publication of a strategy that identifies the range of development and mitigation measures under which the proposed HUD assistance may be approved and that indicates the types of actions that will not be approved in the floodplain.

(c) Individual actions that fit within the types of proposed HUD actions specifically addressed under the areawide compliance do not require further compliance with § 55.20 except that a determination by the Department or a grant recipient subject to 24 CFR part 58 shall be made concerning whether the individual action accords with the areawide strategy. Where the individual action does not accord with the

areawide strategy, specific development and mitigation measures shall be prescribed as a condition of HUD's approval of the individual action.

(d) Areawide compliance under the procedures of this section is subject to the following provisions: (1) It shall be initiated by HUD through a formal agreement of understanding with affected local governments concerning mutual responsibilities governing the preparation, issuance, implementation, and enforcement of the areawide strategy;

(2) It may be performed jointly with one or more Federal departments or agencies, or grant recipients subject to 24 CFR part 58 that serve as the responsible Federal official;

(3) It shall establish mechanisms to ensure that: (i) The terms of approval of individual actions (e.g., concerning structures and facilities) will be consistent with the areawide strategy;

(ii) The controls set forth in the areawide strategy are implemented and enforced in a timely manner; and

(iii) Where necessary, mitigation for individual actions will be established as a condition of approval.

(4) An open scoping process (in accordance with 40 CFR 1501.7) shall be used for determining the scope of issues to be addressed and for identifying significant issues related to housing and community development for the floodplain;

(5) Federal, state and local agencies with expertise in floodplain management, flood evacuation preparedness, land use planning and building regulation, or soil and natural resource conservation shall be invited to participate in the scoping process and to provide advice and comments; and

(6) Eligibility for participation in and the use of the areawide compliance must be limited to communities that are in the Regular Program of the National Flood Insurance Program and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24), thereby demonstrating a capacity for and commitment to floodplain management standards sufficient to perform responsibilities under this part.

(7) An expiration date (not to exceed ten years from the date of the formal adoption by the local governments) for HUD approval of areawide compliance under this part must be stated in the agreement between the local governments and HUD. In conjunction with the setting of an expiration date, a mechanism for HUD's reevaluation of the appropriateness of areawide compliance must be provided in the agreement.

§55.26 Adoption of another agency's review under the executive orders.

If a proposed action covered under this part is already covered in a prior review performed under the executive order by another agency, that review may be adopted by HUD or by a grant recipient authorized under 24 CFR part 58, provided that:

(a) There is no pending litigation relating to the other agency's review for floodplain management;

(b) The adopting agency makes a finding that:

(1) The type of action currently proposed is comparable to the type of action previously reviewed by the other agency; and

(2) There has been no material change in circumstances since the previous review was conducted; and

(c) As a condition of approval, mitigation measures similar to those prescribed in the previous review shall be required of the current proposed action.

§55.27 Documentation.

(a) For purposes of compliance with §55.20, the responsible HUD official who would approve the proposed action (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) shall require that the following actions be documented: (1) Under §55.20(c), practicable alternative sites have been considered outside the floodplain, but within the local housing market area, the local public utility service area, or the jurisdictional boundaries of a recipient unit of general local government (as defined in 24 CFR 570.3), whichever geographic area is more appropriate to the proposed HUD action. Actual sites under review must be identified and the reasons for the non-selection of those sites as practicable alternatives must be described; and

(2) Under §55.20(e), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain as identified in §55.20(d) have been applied to the design for the proposed action.

(b) For purposes of compliance with §55.24, §55.25, or §55.26 (as appropriate), the responsible HUD official (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) who would approve the proposed action shall require documentation of compliance with the required conditions.

(c) Documentation of compliance with this part (including copies of public notices) must be attached to the environmental assessment, the environmental impact statement or the compliance record and be maintained as a part of the project file. In addition, for environmental impact statements, documentation of compliance with this part must be included as a part of the record of decision (or environmental review record for grant recipients subject to 24 CFR part 58).

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

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

Sec.
58.1 Purpose and applicability.
58.2 Terms, abbreviations and definitions.
58.4 Assumption authority.
58.5 Related Federal laws and authorities.
58.6 Other requirements.

Subpart B—General Policy: Responsibilities of Responsible Entities

58.10 Basic environmental responsibility.
58.11 Legal capacity and performance.
58.12 Technical and administrative capacity.
58.13 Responsibilities of the certifying officer.
58.14 Interaction with State, Federal and non-Federal entities.
58.15 Tiering.
58.17 Historic preservation requirements for prior section 17 grants.
58.18 Responsibilities of States assuming HUD responsibilities.

Subpart C—General Policy: Environmental Review Procedures

58.21 Time periods.
58.22 Limitations on activities pending clearance.
58.23 Financial assistance for environmental review.

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

58.30 Environmental review process.
58.32 Project aggregation.
58.33 Emergencies.
58.34 Exempt activities.
58.35 Categorical exclusions.
58.36 Environmental assessments.
58.37 Environmental impact statement determinations.
58.38 Environmental review record.

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

58.40 Preparing the environmental assessment.
58.43 Dissemination and/or publication of the findings of no significant impact.
58.45 Public comment periods.
58.46 Time delays for exceptional circumstances.
58.47 Re-evaluation of environmental assessments and other environmental findings.

Subpart F—Environmental Review Process: Environmental Impact Statement Determinations

58.52 Adoption of other agencies' EISs.
58.53 Use of prior environmental impact statements.

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

58.55 Notice of intent to prepare an EIS.
58.56 Scoping process.
58.57 Lead agency designation.
58.59 Public hearings and meetings.
58.60 Preparation and filing of environmental impact statements.

Subpart H—Release of Funds for Particular Projects

58.70 Notice of intent to request release of funds.
58.71 Request for release of funds and certification.
58.72 HUD or State actions on RROFs and certifications.
58.73 Objections to release of funds.

F. Compliance Tools

Appendix F: Compliance Tools

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F1. ERR Guides: Exempt Projects

1. ERR Guide #1: Activity Exemption Guide

ERR Guide #1

Activity Exemption Guide
(24 CFR Part 58.34)

Project Name: _____ **Project Id. No.:** _____

Activity: _____

✓	Classify Activity	Description of Exemption
	Environmental and other studies	
	Resource Identification	
	Development of plans and strategies	
	Information and financial services	
	Administrative and management activities	
	Public services that will not have a physical impact or result in physical changes (i.e., services concerning employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation, welfare, recreation)	
	Inspection and testing of properties for hazards or defects	
	Purchase of insurance	
	Purchase of tools	
	Engineering or design costs	
	Technical assistance and training	
	Temporary or permanent improvements that do not alter environmental conditions and are limited to activities to protect, repair, or arrest the effects of disasters, imminent threats, or physical deterioration	
	Payments of principal and interest on loan or obligations guaranteed by HUD.	

Reviewer Name (Print)_____

Reviewer Signature: _____ Date: _____

2. ERR Guide #2: Regulatory Checklist Guide

ERR Guide #2

Regulatory Checklist Guide
24 CFR 58.6

Project Name: _____ **Project Id. No.:** _____

Use the questions below to confirm compliance with HUD Regulations

1. Is the Project in an area identified as having special flood hazards?		Yes / No
If Yes,		
1a. Does the community in the designated area participate in the National Flood Insurance Program, or has the area been designated as having special hazards for less than one year?	Yes / No	
1b. Does the property owner have flood insurance?	Yes / No	

If the answer to either question 1a. or 1b. is "No," the project is not in compliance. Otherwise, proceed to question 2:

2. Is the Project in a Coastal Barrier Resource System?	Yes / No

If the answer is "Yes," the project is not in compliance. Otherwise, proceed to question 3:

3. Is the Project in a Clear Zone?		Yes / No
If Yes,		
3a. Has the buyer acknowledged in writing that he/she aware of the implications of being in a Clear Zone?	Yes / No	

If the answer to 3a is "No," the project is not in compliance. Obtain this acknowledgement in writing before proceeding with the Environmental Review.

Reviewer Name (Print) _____

Reviewer Signature: _____ **Date:** _____

F2. ERR Guides: Categorically Excluded Projects

3. ERR Guide #3: Categorical Exclusion; Not Subject to 58.5

ERR Guide #3

Categorical Exclusion; Not Subject to 58.5

Project Name: _____ **Project Id. No.:** _____

✓	**Categorical Exclusions Not Subject to 58.5 (24 CFR 58.35(b))**
	Tenant-based rental assistance
	Supportive services: • Health care • Housing services • Permanent housing placement • Day care • Nutritional services • Short-term payments for rent/mortgage/utility costs • Assistance in gaining access to government benefits/services
	Operating costs: • Maintenance • Security • Operation • Utilities • Furnishings • Equipment • Supplies • Staff training and recruitment
	Economic development activities: • Equipment purchase • Inventory financing • Interest subsidy • Operating costs • Other expenses not associated with construction or expansion
	Activities to assist homeownership of existing or dwelling units under construction not assisted with Federal funds: • Closing costs and down payment assistance to home buyers • Interest buydowns or other actions resulting in transfer of title
	Affordable housing pre-development costs • Legal consulting • Developer and other site-option costs • Project financing • Administrative costs for loan commitments, zoning approvals, and other activities which don't have a physical impact

Reviewer Name (Print)_____

Reviewer Signature: _____ Date: _____

4. ERR Guide #4: Categorical Exclusion; Subject to 58.5

ERR Guide #4

Categorical Exclusion; Subject to 58.5

Project Name: _____ **Project Id. No.:** _____

✓	Categorical Exclusions Subject to 58.5 (24 CFR 58.35)
	Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are already in place and will be retained in the same use without change in size or capacity of more than 20 percent. • Replacement of water or sewer lines • Reconstruction of curbs and sidewalks • Repaving of streets
	Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to the elderly and handicapped.
	Rehabilitation of buildings and improvements under the following conditions: Housing: • Unit density change less than 20 percent • Project doesn't involve change in land use from residential to non-residential • Cost of rehabilitation is less than 75 percent of the estimated cost of replacement after rehabilitation Non-residential Structures • Facilities and improvements were in place and will not be changed in size or capacity by more than 20 percent • Activity does not involve change in land use from non-residential to residential, commercial to industrial, or one industrial use to another
	Individual action on a one- to four-family dwelling or on a project of five or more units scattered on sites more than 2000 feet apart and unit density of four or less units per site.
	Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.
	Combinations of the above activities

If excluded and subject, support your determination:

Reviewer Name (Print)_____

Reviewer Signature: _____ Date: _____

5. ERR Guide #5: Statutory Worksheet*

* HUD Recommended Format

INSTRUCTIONS FOR COMPLETING THE STATUTORY WORKSHEET

For HUD funded projects which are categorically excluded per 24 CFR §58.35(a), the Responsible Entity (**RE**) must make a determination of whether the proposal achieves compliance with each applicable statute, Executive Order or regulation with or without requiring formal consultation procedures, mitigation, permits or having adverse effects on the resources protected by the statute. (These instructions are a brief description of the essential findings needed to establish compliance. These instructions are not intended to replace the applicable regulations. Applicable regulations take precedence over these brief instructions). The Preparer of the Statutory Worksheet must DOCUMENT OR ATTACH THE SOURCES OF THE DETERMINATION.

Record the finding status on the STATUTORY WORKSHEET for each listed Federal statute, regulation, authority as follows:
Status "A" applies when compliance with the authority is achieved without adverse effects on the protected resource, without necessary mitigation or attenuation AND when no formal consultation, permit or agreement is required to establish compliance. In these situations, enter **"A"** in the STATUTORY WORKSHEET status column.
Status "B" applies when project compliance with the authority requires formal consultation, a permit or agreement, OR when the proposal may have an adverse effect on the protected resources. Part B summarizes what additional steps or formal procedures must be completed prior to submitting a Request for Release of Funds (RROF) to HUD or to the State. Evidence of completion and implementation of the required procedures or mitigation must be retained in the project Environmental Review Record (ERR).

Historic Properties (including archeology): **A)** The RE and SHPO agree that there are No Historic Properties Affected per 36 CFR 800.4. **B)** The proposal has an effect on historic properties. Consult with SHPO et al., per §800.5 et seq., to resolve or mitigate adverse effects.

Floodplain Management: **A)** The project does not involve property acquisition, management, construction or improvements within a 100 year floodplain (Zones A or V) identified by FEMA maps, **OR** does not involve a "critical action" (e.g., emergency facilities, facility for mobility impaired persons, etc.) within a 500 year floodplain (Zone B). If FEMA has not published flood maps, the RE must make a finding based on data from the City/County Engineer or local Flood Control Agency. **B)** Complete the 8-step decision making process according to 24 CFR Part 55 to document that there are no practicable alternatives and to mitigate effects of the project in a floodplain.

Wetlands Protection: A) The project does not involve new construction within or adjacent to a wetland identified by or delineated on maps issued by the USDI Fish & Wildlife Service. **B)** Complete the 8-step decision making process in 24 CFR 55 to document that there are no practicable alternatives and to mitigate effects of the project in a wetland. Such action also requires a permit from the U.S. Corps of Engineers under Section 404 of the Clean Water Act.

Coastal Zone Management: A) The project does not involve the placement, erection or removal of materials, nor an increase in the intensity of use in the Coastal Zone (CZ). **B)** Secure concurrence from he CZ Commission or delegated planning commission with your determination of consistency with the applicable CZ Plan.

Sole Source Aquifers (Safe Drinking Water Act): A) The project is not located in a U.S. EPA-designated sole source aquifer area, **OR** the project need not be referred to EPA for evaluation according to the HUD-EPA (Region IX) Sole Source Aquifer Memorandum of Understanding of 1990. **B)** Consult with the Water Management Division of EPA for the implementation of project mitigation measures to avoid contaminating the aquifer.

Endangered Species: A) The RE determines that the proposal is not likely to jeopardize the continued existence of any federally-listed or proposed Threatened and Endangered Species (i.e., plants or animals, fish, or invertebrates), nor destroy or adversely modify designated or proposed critical habitat. This finding is to be based on contact made with the U.S. Fish and Wildlife Service or with State Department of Fish and Game, or by special study completed by a professional biologist or botanist. **B)** Consult with the U.S. Fish and Wildlife Service or National Marine Fisheries Service, in accordance with procedural regulations contained in 50 CFR Part 402. Formal consultation with FWS or NMFS is always required for federally funded major construction activities.

Wild and Scenic Rivers: A) The project is not located within one mile of a listed Wild and Scenic River, **OR** the project will not have an effect on the natural, free flowing or scenic qualities of a river in the National Wild and Scenic Rivers system. **B)** Consult with the U.S. Department of Interior, National Park Service for impact resolution and mitigation.

Air Quality: A) The project is located within an "attainment" area, **OR**, if within a "non-attainment" area, conforms with the EPA-approved State Implementation Plan (SIP), per contact with the State Air Quality Management District or Board, **AND** the project requires no individual NESHAP permit or notification; **B)** Negotiate suitable mitigation measures with the Air Quality Management District or Board, obtain necessary permits, issue required notices. For example, 40 CFR §61.145 requires 10-day prior notification to the Air Quality Administrator when either 260 linear ft., 160 sq.ft., or 35 cubic ft., of asbestos containing material is to be disturbed.

Farmland Protection: A) The project site does not include prime or unique farmland, or other farmland of statewide or local importance as identified by the U.S. Department of Agriculture, Natural Resources Conservation Service NRCS (formerly the Soil Conservation Service, **OR** the project site includes prime or unique farmland, but is located in an area committed to urban uses; **B)** Request evaluation of land type from the NRCS using Form AD-1006, and consider the resultant rating in the project decision, as well as potential mitigation measures (including measures to prevent adverse effects on adjacent farmlands).

Noise Abatement and Control: A) The project does not involve development of noise sensitive uses, **OR** the project is not within line-of-sight of a major or arterial roadway or railroad, **OR** ambient noise level is 65 LDN (or CNEL) or less, based upon the HUD Noise Assessment Guidelines (NAG) for calculating noise levels and Airport Noise Contour map; **B)** Apply the noise standard, per 24 CFR §51.101, to the project approval decision (see §51.104), and implement needed noise attenuation measures (NAG page 39-40) as applicable.

Explosive or Flammable Operations: A) The project is located at an Acceptable Separation Distance (ASD) from any above-ground explosive or flammable fuels or chemicals containers according to "Siting of HUD-Assisted Projects Near Hazardous Facilities" (Appendix F, pp. 51-52), **OR** the project will expose neither people nor buildings to such hazards; **B)** mitigate the hazard (per 24 CFR 51.205) with the construction of a barrier of adequate size and strength to protect the project from the explosive or flammable hazard.

Toxic Chemicals and Radioactive Materials: A) The subject property is free of hazardous materials, contamination, toxic chemicals, gasses and radioactive substances which could affect the health or safety of occupants or conflict with the intended use of the property. Particular attention should be given to nearby dumps, landfills, industrial sites and other operations with hazardous wastes. **B)** Mitigate the adverse environmental condition by shielding, removing or encapsulating the toxic substances in accordance with the requirements of the appropriate Federal, state or local oversight agency; **OR** reject the proposal.

Airport Clear Zones and Accident Potential Zones: A) The project is not within an FAA-designated civilian airport Runway Clear Zone (RCZ) or Approach Protection Zone, or within a military airfield Approach Protection Zone, Clear Zone (CZ) or Accident Potential Zone (APZ), based upon information from the airport or military airfield administrator identifying the boundaries of such zones, **OR** the project involves only minor rehabilitation, **OR** the project involves only the sale or purchase of an existing property in the RCA or CZ; **B)** It is **HUD** policy not to provide any development assistance, subsidy or insurance in RCZs or CZs unless the project will not be frequently used or occupied by people and the airport operator provides written assurances that there are no plans to purchase the project site.

Environmental Justice: A) The proposed site is suitable for its proposed use and will NOT be adversely impacted by adverse environmental conditions; **B)** Site suitability is a concern; the proposal is adversely affected by environmental conditions impacting low income or minority populations. Avoid such impacts or mitigate them to the extent practicable. Address the human health or environmental effects which adversely affect the low income or minority populations.

ERR Guide #5

STATUTORY WORKSHEET

Use this worksheet **only** for HUD projects which are Categorically Excluded per 24 CFR Section 58.35(a).

24 CFR §58.5 STATUTES, EXECUTIVE ORDERS & REGULATIONS

PROJECT NAME and DESCRIPTION - Include all contemplated actions which logically are either geographically or functionally part of the project:

This project is determined to be categorically excluded according to: [Cite section(s)]_____

DIRECTIONS - Write "**A**" in the Status Column when the project, by its nature, does not affect the resources under consideration; OR write "**B**" if the project triggers formal compliance consultation procedures with the oversight agency, or requires mitigation (see Statutory Worksheet Instructions). Compliance documentation must contain verifiable source documents and relevant base data. Attach reviews, consultations, special studies as needed.

Compliance Factors:

Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5	Status A / B	Compliance Finding and Documentation
Historic Preservation [36 CFR Part 800]		
Floodplain Management [24 CFR 55, Executive Order 11988]		
Wetland Protection [Executive Order 11990]		
Coastal Zone Management Act [Sections 307(c), (d)]		
Sole Source Aquifers [40 CFR 149]		
Endangered Species Act [50 CFR 402]		
Wild and Scenic Rivers Act [Sections 7(b), and (c)]		
Clean Air Act - [Sections 176(c), (d), and 40 CFR 6, 51, 93]		

Farmland Protection Policy Act [7 CFR 658]		
Environmental Justice [Executive Order 12898]		
HUD ENVIRONMENTAL STANDARDS Noise Abatement and Control [24 CFR 51B]		
Explosive and Flammable Operations [24 CFR 51C]		
Toxic Chemicals and Radioactive Materials [HUD Notice 79-33]		
Airport Clear Zones and Accident Potential Zones [24 CFR 51D]		

DETERMINATION:

( ) This project converts to Exempt, per Section 58.34(a)(12), because it does not require any mitigation for compliance with any listed statutes or authorities, nor requires any formal permit or license (Status "A" has been determined in the status column for all authorities); **Funds may be drawn down** for this (now) EXEMPT project; OR

( ) This project cannot convert to Exempt because one or more statutes/authorities require consultation or mitigation. Complete consultation/mitigation requirements, publish NOI/RROF and obtain Authority to Use Grant Funds (HUD 7015.16) per Section 58.70 and 58.71 before drawing down funds; OR

( ) The unusual circumstances of this project may result in a significant environmental impact. This project requires preparation of an Environmental Assessment (EA). Prepare the EA according to 24 CFR Part 58 Subpart E.

PREPARER SIGNATURE: _____ DATE:_____

PREPARER NAME: _____

RESPONSIBLE ENTITY OFFICIAL / SIGNATURE: _____

NAME, TITLE: _____ DATE: _____

6. ERR Guide #2: Regulatory Checklist Guide

ERR Guide #2

Regulatory Checklist Guide
24 CFR 58.6

Project Name: _____ **Project Id. No.:** _____

Use the questions below to confirm compliance with HUD Regulations

1. Is the Project in an area identified as having special flood hazards?		Yes / No
If Yes,		
1a. Does the community in the designated area participate in the National Flood Insurance Program, or has the area been designated as having special hazards for less than one year?	Yes / No	
1b. Does the property owner have flood insurance?	Yes / No	

If the answer to either question 1a. or 1b. is "No," the project is not in compliance. Otherwise, proceed to question 2:

2. Is the Project in a Coastal Barrier Resource System?	Yes / No

If the answer is "Yes," the project is not in compliance. Otherwise, proceed to question 3:

3. Is the Project in a Clear Zone?		Yes / No
If Yes,		
3a. Has the buyer acknowledged in writing that he/she aware of the implications of being in a Clear Zone?	Yes / No	

If the answer to 3a is "No," the project is not in compliance. Obtain this acknowledgement in writing before proceeding with the Environmental Review.

Reviewer Name (Print) _____

Reviewer Signature: _____ **Date:** _____

F3. ERR Guides
EA Projects

F3. ERR Guides: Environmental Assessment Projects

7. ERR Guide #6: Environmental Assessment Format*

* HUD Recommended Format

U.S. Department of Housing
and Urban Development
Pacific/Hawaii Office of
Community Planning and Development
Environmental Branch

Environmental Assessment

(HUD recommended format per
24 CFR 58.36, revised 1/99)

Project Identification:

Preparer:

Responsible Entity:

Month/Year:

Environmental Assessment

Responsible Entity [24 CFR 58.2(a)(7)]:

Certifying Officer [24 CFR 58.2(a)(2)]:

Project Name:

Project Location:

Estimated total project cost:

Grant Recipient [24 CFR 58.2(a)(5)]:

Recipient Address:

Project Representative:

Telephone Number:

Conditions for Approval: (List all mitigation measures adopted by the responsible entity to eliminate or minimize adverse environmental impacts. These conditions must be included in project contracts or other relevant documents as requirements). [24 CFR 58.40(d), 40 CFR 1505.2(c)]

FINDING: [58.40(g)]

☐ **Finding of No Significant Impact**
(The project will not result in a significant impact on the quality of the human environment)

☐ **Finding of Significant Impact**
(The project may significantly affect the quality of the human environment)

Preparer Signature: _____ **Date:** _____
Title/Agency:

RE Approving Official Signature: _____ **Date:** _____
Title/ Agency:

Statement of Purpose and Need for the Proposal: [40 CFR 1508.9(b)]

Description of the Proposal: Include all contemplated actions which logically are either geographically or functionally a composite part of the project, regardless of the source of funding. [24 CFR 58.32, 40 CFR 1508.25]

Existing Conditions and Trends: Describe the existing conditions of the project area and its surroundings, and trends likely to continue in the absence of the project. [24 CFR 58.40(a)]

Statutory Checklist

[24CFR §58.5]

For each listed statute, executive order or regulation, record the determinations made. Note reviews and consultations completed as well as any applicable permits or approvals obtained. Attach evidence that all required actions have been taken. Record any conditions or mitigation measures required. Then, make a determination of compliance or consistency.

Factors	Determinations and Compliance Documentation
Historic Preservation [36 CFR 800]	
Floodplain Management [24 CFR 55, Executive Order 11988]	
Wetlands Protection [Executive Order 11990]	
Coastal Zone Management Act [Sections 307(c),(d)]	
Sole Source Aquifers [40 CFR 149]	
Endangered Species Act [50 CFR 402]	
Wild and Scenic Rivers Act [Sections 7 (b), (c)]	
Air Quality [Clean Air Act, Sections 176 (c) and (d), and 40 CFR 6, 51, 93]	
Farmland Protection Policy Act [7 CFR 658]	
Environmental Justice [Executive Order 12898]	

HUD Environmental Standards	Determinations and Compliance Documentation
Noise Abatement and Control [24 CFR 51 B]	
Toxic or Hazardous Substances and Radioactive Materials [HUD Notice 79-33]	
Siting of HUD-Assisted Projects near Hazardous Operations [24 CFR 51 C]	
Airport Clear Zones and Accident Potential Zones [24 CFR 51 D]	

Environmental Assessment Checklist

[Environmental Review Guide HUD CPD 782, 24 CFR 58.40; Ref. 40 CFR 1508.8 &1508.27]

Evaluate the significance of the effects of the proposal on the character, features and resources of the project area. Enter relevant base data and verifiable source documentation to support the finding. Then enter the appropriate impact code from the following list to make a finding of impact. **Impact Codes**: **(1)** - No impact anticipated; **(2)** - Potentially beneficial; **(3)** - Potentially adverse; **(4)** - Requires mitigation; **(5)** - Requires project modification. Note names, dates of contact, telephone numbers and page references. Attach additional materials as needed.

Land Development	**Code**	**Source or Documentation**
Conformance with Comprehensive Plans and Zoning		
Compatibility and Urban Impact		
Slope		
Erosion		
Soil Suitability		
Hazards and Nuisances including Site Safety		
Energy Consumption		

Noise - Contribution to Community Noise Levels		
Air Quality Effects of Ambient Air Quality on Project and Contribution to Community Pollution Levels		
Environmental Design Visual Quality - Coherence, Diversity, Compatible Use and Scale		

Socioeconomic	**Code**	**Source or Documentation**
Demographic Character Changes		
Displacement		
Employment and Income Patterns		

Community Facilities and Services	Code	Source or Documentation
Educational Facilities		
Commercial Facilities		
Health Care		
Social Services		
Solid Waste		
Waste Water		
Storm Water		
Water Supply		
Public Safety - Police		
- Fire		
- Emergency Medical		
Open Space and Recreation - Open Space		
- Recreation		
- Cultural Facilities		
Transportation		

Natural Features		Source or Documentation
Water Resources		
Surface Water		
Unique Natural Features and Agricultural Lands		
Vegetation and Wildlife		

Other Factors		Source or Documentation

NOTE: The Responsible Entity must additionally document and ensure compliance with 24 CFR §58.6 in the ERR, particularly with the Flood Insurance requirements of the Flood Disaster Protection Act and the Buyer Disclosure requirements of the HUD Airport Runway Clear Zone/Clear Zone regulation at 24 CFR 51 Subpart D.

Summary of Findings and Conclusions

ALTERNATIVES TO THE PROPOSED ACTION

Alternatives and Project Modifications Considered [24 CFR 58.40(e), Ref. 40 CFR 1508.9]
(Identify other reasonable courses of action that were considered and not selected, such as other sites, design modifications, or other uses of the subject site. Describe the benefits and adverse impacts to the human environment of each alternative and the reasons for rejecting it.)

No Action Alternative [24 CFR 58.40(e)]
(Discuss the benefits and adverse impacts to the human environment of not implementing the preferred alternative).

Mitigation Measures Recommended [24 CFR 58.40(d), 40 CFR 1508.20]
(Recommend feasible ways in which the proposal or external factors relating to the proposal should be modified in order to eliminate or minimize adverse environmental impacts.)

Additional Studies Performed
(Attach studies or summaries)

List of Sources, Agencies and Persons Consulted [40 CFR 1508.9(b)]

8. ERR Guide #2: Regulatory Checklist Guide

ERR Guide #2

Regulatory Checklist Guide
24 CFR 58.6

Project Name: _____ **Project Id. No.:** _____

Use the questions below to confirm compliance with HUD Regulations

1. Is the Project in an area identified as having special flood hazards?		Yes / No
If Yes,		
1a. Does the community in the designated area participate in the National Flood Insurance Program, or has the area been designated as having special hazards for less than one year?	Yes / No	
1b. Does the property owner have flood insurance?	Yes / No	

If the answer to either question 1a. or 1b. is "No," the project is not in compliance. Otherwise, proceed to question 2:

2. Is the Project in a Coastal Barrier Resource System?	Yes / No

If the answer is "Yes," the project is not in compliance. Otherwise, proceed to question 3:

3. Is the Project in a Clear Zone?		Yes / No
If Yes,		
3a. Has the buyer acknowledged in writing that he/she aware of the implications of being in a Clear Zone?	Yes / No	

If the answer to 3a is "No," the project is not in compliance. Obtain this acknowledgement in writing before proceeding with the Environmental Review.

Reviewer Name (Print) _____

Reviewer Signature: _____ **Date:** _____

F4. ERR Guides
EIS Projects

F4. ERR Guides: Environmental Impact Statement Projects

9. ERR Guide #2: Regulatory Checklist Guide

ERR Guide #2

Regulatory Checklist Guide
24 CFR 58.6

Project Name: _____ **Project Id. No.:** _____

Use the questions below to confirm compliance with HUD Regulations

1. Is the Project in an area identified as having special flood hazards?		Yes / No
If Yes,		
1a. Does the community in the designated area participate in the National Flood Insurance Program, or has the area been designated as having special hazards for less than one year?	Yes / No	
1b. Does the property owner have flood insurance?	Yes / No	

If the answer to either question 1a. or 1b. is "No," the project is not in compliance. Otherwise, proceed to question 2:

2. Is the Project in a Coastal Barrier Resource System?	Yes / No

If the answer is "Yes," the project is not in compliance. Otherwise, proceed to question 3:

3. Is the Project in a Clear Zone?		Yes / No
If Yes,		
3a. Has the buyer acknowledged in writing that he/she aware of the implications of being in a Clear Zone?	Yes / No	

If the answer to 3a is "No," the project is not in compliance. Obtain this acknowledgement in writing before proceeding with the Environmental Review.

Reviewer Name (Print) _____

Reviewer Signature: _____ **Date:** _____

F5. Supplemental
ERR Guides

F5. Supplemental ERR Guides

10. ERR Guide #7: Project Evaluation Guide

ERR Guide #7

Project Evaluation Guide
(24 CFR Part 58.32)

Project Name: _____ **Project Id. No.:** _____

Recipient Point of Contact	*Name:* *Address:* *Phone 1:* *Phone 2:* *Fax:* *e-mail:*
Project site location	
Current use of the site	
Existing structures	
Anticipated duration of activity	
Intended use of the site	
Additional comments	

11. ERR Guide #8: Work Scope Evaluation Guide

ERR Guide #8

Work Scope Evaluation Guide

Project Name: _____ **Project Id. No.:** _____

Scope of the Project *(See Level-of-Effort-Chart)*	
Anticipated required resources	
Anticipated required permits	
Projects geographically or functionally related	*Project:* *Description of relationship:* *Project:* *Description of relationship:* *Project:* *Description of relationship:* *Project:* *Description of relationship:*

12. ERR Guide #9: Emergency Determination Guide

ERR Guide #9

Emergency Determination Guide
(24 CFR Part 58.33)

Project Name: _____ **Project Id. No.:** _____

Emergency Situation	
Emergency Measures to be Taken	
If Significant Environmental Impact	*Describe Impact:* *CEQ Contacted? Yes No*

Reviewer Name (Sign) _____

Reviewer Name (Print) _____ Date: _____

13. ERR Guide #10: Environmental Review Record Checklist Guide

ERR Guide #10: Environmental Review Record (ERR) Checklist Guide

Level of Environmental Review	Form Required for Review	Notification and Release of Funds
Exempt, sec 58.34	ERR Guide #1 or equivalent	No public notice nor release of funds by HUD is required (sec. 58.34(b)).
Categorically excluded, not subject to 58.5 (sec. 58.35(b))	ERR Guide #3 or equivalent	No public notice nor release of funds by HUD is required (sec. 58.35(b)).
Categorically excluded, subject to 58.5 (sec. 58.35(a)) Documentation shows compliance is not triggered.	Statutory Worksheet or equivalent	No public notice nor release of funds by HUD is required (sec. 58.34(a)(12) and (b)).
Categorically excluded, subject to 58.5 (sec. 58.35(a)) Documentation shows compliance is triggered.	Statutory Worksheet or equivalent	NOI/RROF: Publish and wait 7days Post/Mail and wait 10 days Submit RROF to HUD and wait 15 days HUD issues ROF
Environmental Assessment (EA), sec. 58.36 Document compliance findings re: NEPA and sec. 58.5 laws and authorities. Finding of no significant impact (FONSI)	EA format recommended by HUD or equivalent	Combined FONSI and NOI/RROF: Publish and wait 15 days Post/ Mail and wait 18 days Submit RROF to HUD and wait 15 days HUD issues ROF
Environ. Impact Statement (EIS), sec. 58.37 Finding of significant impact (FOSI)	40 CFR 1500-1508	Notice of Intent to Prepare an EIS Draft EIS review and comment Final EIS review and comment NOI/RROF: Publish and wait 7 days Post/Mail and wait 10 days Submit RROF to HUD and wait 15 days HUD issues ROF

NOI/RROF Notice of Intent to Request Release of Funds
RROF Request for Release of Funds and Certification (HUD form 7015.15) that is submitted to HUD by the recipient.
ROF Authority to Use Grant Funds (HUD form 7015.16) that is issued by HUD to the recipient.

14. ERR Guide #11: EIS Adoption/Re-Use Guide

ERR Guide #11

EIS Adoption/Re-use Guide
24 CFR 58.52, 58.53

Project Name: _____ **Project Id. No.:** _____

Use this Form to record a decision to adopt or re-use an existing EIS

EIS Identification (#, Title, etc.)	
EIS Lead Agency	
Summary of Findings	

The existing EIS must comply with all of the following:

✓ if EIS Complies	Requirement
	The EIS must meet NEPA CEQ guidelines
	The environmental situation cannot have changed substantially since EIS was conducted
	The EIS lead agency must be contacted and informed of intent to use EIS

Reviewer Name (Print) _____

Reviewer Signature: _____ **Date:** _____

15. ERR Guide #12: Scoping Meeting Documentation Guide

ERR Guide #12

Scoping Meeting Documentation Guide
24 CFR 58.56

Project Name: _____ **Project Id. No.:** _____

Use this Form to document outcomes from the scoping meeting

Meeting Information:	Place: Date & Time:

Meeting Outcomes:

F6. Notification and Release of Funds Tools

F6. Public Notification and Release of Funds Tools

16. Notice of Intent to Request Release of Funds*

* HUD Recommended Format

Sample Notice of Intent to Request Release of Funds

NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

Date of Notice

Name of Responsible Entity [RE]

Address

City, State, Zip Code

Telephone Number of RE Preparer Agency

On or about *At least one day after the end of the comment period* the *Name of RE* will *If the RE is not also the grantee, insert the following language here: "Authorize the [Name of grantee] to"* submit a request to the *HUD/State administering agency* for the release of *Name of grant program* funds under *Title/Section [ ]* of the *Name of the Act* of 19___, as amended, to undertake a project known as *Project title*, for the purpose of *Nature/Scope of project, estimated funding, and project location if applicable.*

The activities proposed *Alternative #1: are categorically excluded under HUD regulations at 24 CFR Part 58 from National Environmental Policy Act requirements or Alternative #2: comprise a project for which a Finding of No Significant Impact on the environment was [published/posted] on [date of finding publication/posting]*. An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at *Name and Address of RE office where ERR can be examined and name and address of other locations where the record is available for review* and may be examined or copied weekdays ___ A.M. to ___ P.M.

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the *RE designated office responsible for receiving and responding to comments*. All comments received by *If notice is published: notice date plus seven days; If notice is posted: posting date plus ten days* will be considered by the *Name of RE* prior to authorizing submission of a request for release of funds.

RELEASE OF FUNDS

The *Name of RE* certifies to *HUD/State* that *Name of Certifying Officer* in *his/her* capacity as *Official Title* consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. *HUD's/State's* approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the *Name of Grantee* to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

HUD/State will accept objections to its release of funds and the *RE's* certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer of the *Name of RE*; (b) the *RE* has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the grant recipient has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by *HUD/State*; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and shall be addressed to *HUD/State grant administration office* at *Address of that office*. Potential objectors should contact *HUD/State* to verify the actual last day of the objection period.

Name and Title of RE Certifying Officer

17. Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds*

* HUD Recommended Format – Concurrent Notice

Sample Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds

NOTICE OF FINDING OF NO SIGNIFICANT IMPACT AND NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

Date of Notice

Name of Responsible Entity [RE]

Address

City, State, Zip Code

Telephone Number of RE Preparer Agency

These notices shall satisfy two separate but related procedural requirements for activities to be undertaken by the *Name of RE or Grantee.*

REQUEST FOR RELEASE OF FUNDS

On or about *At least one day after the end of the comment period* the *Name of RE* will *If the RE is not also the grantee, insert the following language here: "Authorize the [Name of grantee] to"* submit a request to the *HUD/State administering agency* for the release of *Name of grant program* funds under *Title/Section [ ]* of the *Name of the Act* of 19__, as amended, to undertake a project known as *Project title*, for the purpose of *Nature/Scope of project, estimated funding, and project location if applicable.*

FINDING OF NO SIGNIFICANT IMPACT

The *Name of RE* has determined that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Additional project information is contained in the Environmental Review Record (ERR) on file at *Name and address of RE office where ERR can be examined and name and address of other locations where the record is available for review* and may be examined or copied weekdays ___ A.M. to ___ P.M.

PUBLIC COMMENTS

Any individual, group, or agency disagreeing with this determination or wishing to comment on the project may submit written comments to the *RE designated office responsible for receiving and responding to comments.* All comments received by *If notice published: notice plus fifteen days; If notice posted: posting date plus eighteen days* will be considered by the *Name of RE* prior to authorizing submission of a request for release of funds. Comments should specify which Notice they are addressing.

RELEASE OF FUNDS

The *Name of RE* certifies to *HUD/State* that *Name of certifying officer* in *his/her* capacity as *Official title* consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. *HUD's/State's* approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the *Name of grantee* to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

HUD/State will accept objections to its release of funds and the *RE's* certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer of the *Name of RE*; (b) the *RE* has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the grant recipient has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by *HUD/State*; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and shall be addressed to *HUD/State grant administration office* at *Address of that office*. Potential objectors should contact *HUD/State* to verify the actual last day of the objection period.

Name and Title of RE Certifying Officer

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18. HUD Form 7015.15

Request for Release of Funds and Certification

U.S. Department of Housing and Urban Development

OMB No. 2506-0087 (exp. 6/30/2001)

This form is to be used by Responsible Entities and Recipients (as defined in 24 CFR part 58.2) when requesting the release of funds, and requesting the authority to use such funds, for HUD programs identified by statutes that provide for the assumption of the environmental review responsibility by units of general local government and States. Public reporting burden for this collection of information is estimated to average 0.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor this collection of information, and a person is not required to respond to questions about this requirement, unless the collection request displays a valid OMB control number.

Part I. Program Description and Request for Release of Funds (to be completed by Responsible Entity)

1. Program Title(s):	2. HUD/State Identification Number:	3. Recipient Identification Number: (optional)

4. OMB Catalog No(s):	5. Name & Address of Responsible Entity:

6. For information about this request, Contact:	7. Name & Address of Recipient: (if different from responsible entity)

8. HUD or State Agency & Office Unit to Receive Request:

The recipient(s) of assistance under the program(s) listed above requests the release of funds and removal of environmental grant conditions governing the use of the assistance for the following:

9. Program Activity/Project Name:	10. Location: (street, address, city, county, & state)

11. Program Activity/Project Description:

Part 2. Environmental Certification (to be completed by responsible entity)

With reference to the above Program Activity(ies)/Project(s), I, the undersigned officer of the responsible entity, certify that:

1. The responsible entity has assumed responsibility for and complied with, or will continue to comply with, the National Environmental policy Act of 1969, as amended; the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.5 and 24 CFR 58.6; and the applicable State and Local laws.
2. After considering the type and degree of environmental effects identified by the environmental review completed for the proposed project described in Part 1 of this request, I have found that the project ☐ did ☐ did not require the preparation and dissemination of an of an environmental impact statement.
3. The responsible entity has disseminated and/or published in the manner prescribed by 24 CFR 58.43 and 58.60 a notice to the public in accordance with 24 CFR 58.70 and as evidenced by the attached copy (copies) or provide evidence of posting and mailing procedure.
4. The dates for all statutory and regulatory time periods for review, comment or other action are in compliance with procedures and requirements of 24 CFR Part 58.
5. In accordance with 24 CFR Part 58.71(b) the responsible entity will advise the recipient (if different from the responsible entity) of any special environmental conditions that must be adhered to in carrying out the project.

As the duly designated certifying official of the responsible entity, I also certify that:

6. I am authorized to and do consent to assume the status of federal official under the National Environmental Policy Act of 1969 and each provision of law designated in the 24 CFR Part 58.5 and 24 CFR Part 58.6 list of NEPA-related authorities insofar as the provisions of these laws apply to the HUD responsibilities for environmental review, decisionmaking and actions that have been assumed by the responsible entity.

7. I am authorized to and do accept, on behalf of the recipient personally, the jurisdiction of the federal courts for the enforcement of all these responsibilities, in my capacity as certifying officer of the responsible entity.

Signature of Certifying Officer of the Responsible Entity:	Title of Certifying Officer:
X	Date Signed:
Address of Certifying Officer:	

Part 3. To be completed when the Recipient is not the Responsible Entity

The recipient agrees to abide by the special conditions, procedures and requirements of the environmental review and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions in accordance with 24 CFR 58.71(b).

Signature of Authorized Officer of the Recipient:	Title of Authorized Officer:
X	Date Signed:

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 USC 1001, 1010, 1012; 31 USC 3729, 3802).

19. HUD Form 7015.16

Authority to Use Grant Funds

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

To: (name & address of Grant Recipient & name & title of Chief Executive Officer)	**Copy To:** (name & address of SubRecipient)

We received your Request for Release of Funds and Certification, form HUD-7015.15 on:	
Your Request was for HUD/State Identification Number:	

All objections, if received, have been considered. And the minimum waiting period has transpired.

You are hereby authorized to use funds provided to you under the above HUD/State Identification Number.
File this form for proper record keeping, audit, and inspection purposes.

Typed Name & Title of Authorizing Officer:	Signature of Authorizing Officer:	Date Signed:
	X	

Previous editions are obsolete.

form **HUD-7015.16** (2/94)
ref. Handbook 6513.01

F7. Monitoring Tools

20. Environmental Review Checklist

ENVIRONMENTAL REVIEW CHECKLIST

RECIPIENT: _____

PROGRAMS: _____

_____

DATE: _____

REVIEWER: _____

RECIPIENT STAFF INTERVIEWED: _____

_____

The environmental effects of each IHBG activity must be evaluated in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and other related authorities identified under the HUD implementing regulations at 24 CFR parts 50 or 58. The program regulations (§1000.20)provide an Indian tribe three options for addressing environmental review requirements:

(I) An Indian tribe may assume environmental review responsibilities and must perform the environmental review in accordance with 24 CFR part 58; or

(II) An Indian tribe may decline to assume environmental review responsibilities, and HUD will then perform the environmental review in accordance with 24 CFR part 50; or,

(III) An Indian tribe may decline to assume environmental review responsibilities, but it(or, if applicable, the TDHE) may prepare an Environmental Assessment for HUD review and evaluation.

Unless specifically excepted, all negative responses must be discussed under Findings, Concerns and Comments below.

A. If the tribe assumed environmental review responsibilities, the following questions should be addressed/areas reviewed.

1.Is there a separate Environmental Review Record (ERR)for each project? **YES** **NO**

2. Was the current HUD recommended (or an equivalent format) used for the ERR? **YES** **NO**

3. Does each ERR contain the following:

a. Project description including, when applicable, geographic boundaries and all related HUD or non-HUD funded activities proposed? **YES** **NO**

b. Written determinations in those cases in which the recipient claims that projects or activities are "exempt" under §58.34 or "categorically excluded" under §58.35? **YES** **NO** **N/A**

c. Finding of No Significant Impact (FONSI)? **YES** **NO** **N/A**

(If a negative response is based on the fact that the recipient found that a significant impact may occur, please go to number 7 below to continue the review)

d. Copy of published Notice of FONSI or of a Combined Notice? **YES** **NO** **N/A**

e. Copy of published Notice of Intent to Request Release of Funds (NOI/RROF) or a Combined Notice of FONSI and NOI/RROF? **YES** **NO** **N/A**

f. Form HUD 7015.15, Request for Release of Funds and Certification? **YES** **NO** **N/A**

g. Form HUD 7015.16, Notice of Removal of Grant Conditions signed and dated by HUD, indicating that at least 15 days were allowed for objections? **YES** **NO** **N/A**

4. Do recipient's records show that:

a. With the exception of exempt activities, no grant funds were obligated or spent prior to the receipt of the HUD 7015.16 (or the date specified in the HUD 7015.16, if earlier)? **YES** **NO**

b. With the exception of categorically excluded activites determined to be exempt under the provisions of §58.34(a)(12), no physical

development activities began prior to the receipt of the HUD 7015.16 (or the date specified in the HUD 7015.16, if earlier)? **YES** **NO**

c. Identify the source of the information used to answer 4a and 4b.

5. Completeness of Statutory Checklist

a. Is there evidence that the Federal laws and authorities listed at §58.5 have been specifically addressed for all activities except for those classified as exempt under §58.34?
YES **NO**

b. Were recognized authoritative sources used to support the conclusions reached? **YES** **NO**

6. If mitigating measures are required, are they included in the ERR as part of the actions pertaining to the environmental review? **YES** **NO**

7. Environmental Impact Statements If the finding was that the release of funds may significantly impact the human environment and an Environmental Impact Statement(EIS) was required, does the ERR contain:

a. Copy of a published Notice of Intent to Prepare an EIS? **YES** **NO**

b. Evidence that a copy of such notice was sent to local news media, interested individuals and groups, local, State and Federal agencies, including the Headquarters and appropriate regional office of the EPA? **YES** **NO**

c. A draft EIS? **YES** **NO**

d. A supplemental Draft EIS, if necessary? **YES** **NO**

e. Evidence that copies of the Draft EIS were sent to the EPA, other Federal agencies, State and local agencies, any entity designated by a

State pursuant to E.O. 12372, and interested individuals and groups? **YES** **NO**

f. A Final EIS? **YES** **NO**

g. A Final Supplemental EIS, if necessary? **YES** **NO** **N/A**

h. Evidence that the comments were responded to in the final EIS? **YES** **NO**

i. Evidence that the Draft and Final EISs were filed for Federal Register publication with the EPA for the required time periods before the recipient submitted the Request for Release of Funds? **YES** **NO**

B. If the tribe declined to assume environmental review responsibilities, the following questions should be addressed/areas reviewed. Pursuant to the requirements of 24 CFR 50(h) and consistent with its assurance of compliance with these requirements, did the Tribe (or TDHE)

1. Either supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50 or prepare for an Environmental Assessment for HUD review and evaluation? **YES**___ **NO**___

2. (If applicable)Carry out mitigating measures required by HUD as a consequence of its review? **YES**___ **NO**___ **N/A**____

3. (IF applicable)Select an alternative property rather than carry out mitigating measures? **YES**__ **NO**__ **N/A**

4. Not acquire, rehabilitate, convert, lease, repair or construct property, nor commit local funds for these program activities with respect to any eligible property until HUD approval of the property was received?

YES___**NO**___

FINDINGS, CONCERNS, AND COMMENTS

21. Monitoring Questionnaire

Grantee: _____

Reviewer: _____

Date(s) of Monitoring: _____

Programs and Project(s) Reviewed (Names and Numbers):

_____

_____

_____

_____

_____

1. Environmental Review Record (ERR) (58.30)

a. Is there a separate Environmental Review Record (ERR) for each project? (including for properties assisted by Housing Rehabilitation programs)? Yes____ No____ NA____

b. Is the ERR complete and available for public review--contain all items appropriate to the programs and activities? (Refer to Region I "Environmental Review Record", 1991, listing of documents to be included.) Yes____ No____ NA____ If no, indicate which items were deficient.

_____

_____

2. Project Definition and Aggregation (58.32)

a. Are projects and activities:
- properly defined and aggregated? Yes____ No____ NA____
- grouped together for environmental review when related geographically or functionally? Yes____ No____ NA____

b. If there were projects over a one or more year period, were environmental reviews conducted on the full scope of multi-year activities? Yes____ No____ NA____

c. If projects or activities were a continuation of a previously approved project, was a written decision supporting the continued applicability of the previous environmental review and clearance included in the ERR? Yes____ No____ NA____

Comments: _____

_____

3. Exempt Activities (58.34) and Categorically Excluded Activities, Converted to Exempt [58.34(10)]:

Were Exempt and Categorically Excluded, Converted to Exempt activities correctly identified and reviewed (including signed determinations of exemptions with citations to regulations and supporting documentation)? Yes____ No____ NA____

4. Categorically Excluded Activities (58.35)

a. Were projects classified as Categorically Excluded correctly identified and reviewed? Yes____ No___ NA____

b. Were environmental reviews for Categorically Excluded projects satisfactorily completed and documented? Yes____ No____ NA____

Comments:_____

_____

5. Did the grantee correctly determine and document the applicability of the following Federal laws and authorities under 58.5?:

• Historic Properties (National Historic Preservation Act of 1966) Yes____ No____ NA____

Does each ERR document:

a) the non-applicability of Section 106 historic preservation procedures? Yes____No___ NA____

If yes, identify the documentation you saw: Correspondence to and from: SHPO___ Local Historical Commission____ written determination from local staff with skills to make such determinations____ other_____

(Explain)_____

b) compliance with Section 106 historic preservation procedures when proposed actions would potentially affect historic resources that were listed or potentially eligible historic properties or districts or archaeological resources? Yes____ No____ NA____

If yes, please identify the documentation that you saw: Correspondence to and from: Local Historical Commission____,SHPO____, Advisory Council on Historic Preservation for "no adverse effect" determinations___, MOA executed by Chairman of the Advisory Council for "adverse effect" determinations, MOA for local Historical Commission determinations_____. Comments:_____

_____

• Floodplain Management and Wetlands Protection (Flood Disaster Protection Act of 1973 and EO11988, Floodplain Management, 1977, and EO 11990 Protection of Wetlands, 1977 Federal Water Pollution Control Act, 1977).

Does each ERR fully document:

a) the non-applicability of the Executive Order(s) by showing that proposed actions will not be located in a wetland area and/or the 100-year floodplain (500-year floodplain for critical actions) Yes____ No____ NA____

If yes, which data sources were included on the Statutory Checklist or the ERR: Flood Insurance Rate Map (with panel no., date and zone)____, field observation___, U.S.G.S. quadrangle map for wetlands___, other data sources_____. (Identify)_____

carried out? Yes___ No___ NA___

Comments:_____

- Coastal Areas Protection and Management (Coastal Zone Management Act of 1972, and Coastal Barriers Resources Act of 1982).

Were there any projects being constructed within the coastal zone?
Yes___ No___ (If no, skip this section.)

a) If yes, was a Consistency Review and certification obtained from the State CZM agency? Yes___ No___ NA___

b) If the State CZM agency has indicated that the proposed activity(ies) is inconsistent, have such issues been adequately resolved? Yes___ No___

c) If the grantee has not resolved any inconsistency, has the project been dropped, and/or substituted? Yes___ No___

d) Were there any projects located within the coastal zone whereby the grantee failed to take the above compliance actions? Yes___ No___

Comments:_____

_____

- Sole Source Aquifers (Safe Drinking Water Act of 1974).

Are there any projects that would potentially affect an EPA designated sole source aquifer area? Yes___ No___ (If no, skip this section.)
Has the project been reviewed by EPA? Yes___ No___

Comments:_____

_____

- Endangered Species (Endangered Species Act of 1973).

Are any projects located in the vicinity where a listed species or critical habitat has been identified? Yes___ No___ NA___
If yes, were appropriate reviews and compliance actions undertaken? Yes___ No___

Comments:_____

_____

- Wild and Scenic Rivers (Wild and Scenic Rivers Act of 1968).

Are any projects located in the vicinity of a designated wild and scenic river?
Yes___ No___ NA___
If yes, were appropriate reviews and compliance actions undertaken? Yes___ No___

Comments:_____

Emission Standards for Hazardous Air Pollutants, 40 CFR 61, Subpart M, 1990).

Were there any renovation or demolition activities involving removal and/or disposal of asbestos which were subject to the NESHAP requirements? Yes___ No___ NA___

If yes, did the grantee comply with the notification requirements under NESHAP? Yes___ No___ NA___

Was documentation of compliance included in the ERR (i.e."Notification of Demolition and Renovation" and/or "Waste Shipment Record")? Yes___ No___ NA___

Were there any projects that would potentially impact air quality? Yes___ No___ NA___
If yes, were appropriate reviews and compliance actions undertaken? Yes___ No___
Are such projects in conformance with the SIP? Yes___ No___

Comments:_____

_____

- Farmlands Protection (Farmland Protection Policy Act of 1981)

Are there projects located on or directly adjacent to a farmland that is categorized as prime, unique or of State or local importance? Yes___ No___ NA___
If no, proceed to next item. If yes, were appropriate reviews and compliance actions undertaken? Yes___ No___

Comments:_____

_____

HUD Environmental Standards: 24 CFR Part 51

Noise - 24 CFR Part 51, Subpart B

Was there documentation in the ERR of compliance with 24 CFR Part 51, Subpart B, or that compliance was not required? Yes___ No___ NA___

Were noise impacts considered for residential projects involving new construction or rehabilitation? Yes___ No___ NA___

If any sites contained noise sensitive uses or a proposed noise sensitive use, complete the following. Did the grantee:
- consider noise impact? Yes___ No___
- include all noise sources? Yes___ No___
- apply HUD noise standards (24 CFR Part 51, Subpart B)? Yes___ No___
- use HUD methodology or one compatible with HUD policies? Yes___ No___
- use appropriate mitigating measures? Yes___ No___

Comments:_____

_____

• Thermal/Explosive Hazards 24 CFR Part 51 Subpart C

Are there any hazardous containers located within one mile of proposed activities? Yes____ No____ NA____

If yes, was there adequate documentation of determination of Acceptable Separation Distances between hazards and proposed activities? Yes____ No____ NA_____

If yes, did the grantee: identify the specific nature of the hazard, develop the ASD for the site and make a determination that proposed activities were to be located at an acceptable separation distance from the hazard? Yes____ No____

Comments:_____

_____

• Airport Clear Zones (51(d)

Is there a military airfield or commercial service airport near (in the vicinity of) proposed project sites? Yes____ No____ NA____

If yes, were any sites located in a Runway Clear Zone, Clear Zone or Accident Potential Zone? Yes____ No____

If no, was there adequate documentation of non-applicability of this requirement? Yes____ No____

If yes, was there adequate documentation of compliance with 24 CFR Part 51, Subpart D for such projects? Yes____ No____

Comments:_____

• Hazardous, Toxic and Radioactive Materials (HUD Notice 79-33).

Superfund Law: Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.(CERCLA).

Was the EPA Superfund National Priorities or CERCLA List or equivalent State list consulted for residential projects involving new construction or conversion of a non-residential land use to a residential land use including the HOME, HOPE 3 and HOPWA programs? Yes____ No____ NA_____

Was the EPA Superfund National Priorities or CERCLA List or equivalent State list consulted for generic reviews for Housing Rehabilitation programs? Yes____ No____ NA_____

Were there any projects located in or near sites that were known or suspected to be contaminated by toxic chemicals or radioactive materials including but not limited to sites listed on an EPA Superfund National Priorities or CERCLA list, or equivalent State list: located within 3,000 feet of a toxic or solid waste landfill site adjacent to an

If yes, was there documentation of appropriate compliance actions taken (i.e. site assessment--HUD ASTM Environmental Site Assessment(E.50.02.2 6/30/92), notified EPA or state environmental agency, remedial actions were undertaken)?
Yes___ No___ NA_____

Comments:_____
_____

Other State, Local and Federal Environmental Laws or Authorities

Did the grantee correctly determine the applicability of the following?:

- Solid Waste Management (Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, RCRA).

Were there any projects which involved the disposal of hazardous waste (including asbestos)? Yes___ No___ NA_____

If yes, was there documentation in the ERR, i.e. copy of the hazardous waste manifest, to indicate that appropriate compliance actions were taken? Yes___ No_____

Comments:_____
_____

- State Asbestos regulations

Did grantee undertake renovation or demolition activities subject to the State requirements involving removal and/or disposal of asbestos? Yes___ No___ NA_____

If yes, did the grantee comply with the notification requirements under State regulations? Yes___ No___ NA_____

Was documentation of compliance included in the ERR (i.e. "Notification of Demolition and Renovation" and/or "Waste Shipment Record")? Yes___ No___ NA_____

Comments:_____
_____

- Water Quality (Federal Water Pollution Control Act/Federal Clean Water Act of 1977).

Were there any activities that required an NPDES permit that involved point or non-point pollutants discharged:
- into waters of the U.S.? Yes___ No___ NA___
- from surface runoff collected or channeled? Yes___ No___ NA___
- discharges from separate storm sewers? Yes___ No___ NA___
- stormwater runoff from a construction site? Yes___ No___ NA___

If other compliance actions or mitigating measures were required, were they taken? Yes___ No___ NA___ Comments:_____
_____

Were there projects involving removal of lead paint? Yes___ No___ NA___
Was there documentation of compliance with HUD and State Lead Base Paint requirements? Yes___ No___
Comments:_____

Other Requirements

Are there any other federal, state or local environmental requirements or compliance actions which should have been undertaken in addition to those included in Section 58.5? Yes___ No___NA___

Comments:_____
_____

Note: Include samples of completed Statutory Checklist.

5. Environmental Assessment (EA) (58.36, 58.40, 58.43)

a. Were projects and/or activities which required the preparation of an environmental assessment correctly identified? Yes___ No___ NA___
If no assessments were required, skip this section.

If assessments were required, but not prepared, identify the projects that were subject to an assessment.

_____
_____

b. Were Statutory Checklist satisfactorily completed for each project for which an EA was prepared? Yes____ No___ If no, Explain below.

_____
_____

c. Were all prepared EA's fully completed? Yes___ No___
d. Was supporting documentation adequate? Yes___ No____
e. If a Finding of No Significant Impact was made, was it supported by the content and documentation of the EA? Yes___ No___
f. Was a Finding of No Significant Impact made on the basis of completing and adequately documenting a statutory checklist and an EA for each project subject to an EA? Yes___ No___
g. Were there any environmental factors or circumstances which were not properly addressed or which raised serious questions about the appropriateness of the FONSI determination or the reasonableness of the mitigation measures proposed? Yes____ No____

Explain all "no" responses (a-f) below.

_____
_____
_____
_____

Are the thresholds at 58.37 applicable to the project(s)? Yes____ No____ NA___
If yes, was compliance with the NEPA EIS process adequately documented?
Yes____No____Comments:_____

7. Public Notice Requirements (58.21, 58.42, 58.44, 58.45)

Has the grantee complied with public notice requirements for all projects subject to these requirements? Yes____ No____ NA___

For RROF and FONSI:

a. Were RROF and/or FONSI notices published? Yes____ No____ NA___
b. Were Notices consistent with HUD Format? Yes____ No____ NA___
c. Was the project name or title, purpose or nature, location and estimated cost and scope identified? Yes____ No____ NA____
d. Did the grantee comply with the 7 and/or 15-day comment period and 15-day objection period? Yes____ No____ NA____
e. Did the grantee submit its RROF after the required comment period expired? Yes____ No____ NA____

Comments:_____
_____
_____

Dissemination of NOI/RROF and FONSI (58.43,58.70)

Did the grantee send its public notices to:

EPA Regional and Washington Offices for a FONSI or EIS Yes____ No____ NA____
Local News media Yes____ No____ NA____
Interested individuals or groups Yes____ No____ NA____
Appropriate local, state and federal agencies Yes____ No____NA____

Were comments received? Yes____ No____ NA____

Comments:_____
_____

8. Compliance with Executive Order 12372

a. Did program include water & sewer projects involving planning, construction or replacement of such facilities? Yes____ No____ NA____

b. If yes, did the municipality comply with its responsibilities under the Executive Order? Yes____ No____ NA____

Comments:_____

Does the ERR indicate that:

Funds were not obligated or expended prior to receipt of Removal of Grant Conditions (HUD 7015.16) (other than for Exempt activities?) Yes____ No____ NA____

If yes, list programs and/or projects. Indicate date(s) costs were obligated or expended, and date(s) of the Letter of Notice of Removal of Grant Conditions.

10. Energy Conservation

Identify the grantee's energy conservation activities.

11. Technical and Administrative Capacity (58.12)

a. Management.

Briefly describe the organization of the environmental review function. Describe such elements as lines of authority, management systems such as Programmatic Agreements, management information systems, logs, charts, summaries, etc., and coordination with other agencies.

b. Staff Capability

Identify staff by name and position who are directly responsible for carrying out administrative and technical environmental reviews. Briefly describe their responsibilities. Describe the training and experience of technical staff. Indicate the role, if any, played by other local agencies and consultants in performing environmental review responsibilities.

environmental review process.

Has the grantee demonstrated that it has the technical and administrative capacity to carry out its environmental review responsibilities under Part 58? Yes___ No___
(Explain)_____

13. Quality of Environmental Reviews

How well does the environmental documentation in the ERR enable an individual to understand the scope of a project, the environmental issues, the basis for compliance determinations, environmental impact determinations, program modifications, and mitigation measures?_____

Rate on a scale of 1 to 10. Rating/___/Optional

14. Environmental Issues Relevant to HUD Funded Programs

15. Overall Performance

On the basis of your review of the municipality's compliance with regulations, staff capability, management systems and the quality of its reviews and your evaluation of how well it addresses pertinent environmental issues. Identify areas which are in need for improvement.

Indicate a rating from 1-10. Rating/___/Optional

Identify the areas for which you provided technical assistance during the monitoring visit (and in subsequent telephone conversations), and the individuals who received TA.

Recommendations for Follow-up Monitoring, Training and Technical Assistance

Prepared by: _____

Title: _____

Date: _____

F8. Other Tools

F8. Other Tools

22. Principles for Compliance and Review Process: Environmental Laws and Authorities Cited in 24 CFR 58.5

Principles for Compliance and Review Process: Environmental Laws and Authorities Cited in 24 CFR 58.5

A HUD ONAP Guidance Document

June 2001

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Purpose

This guide provides a detailed overview of the principles for compliance and the review process for those environmental laws and authorities listed in 24 CFR 58.5 **Related Federal laws and authorities**. Many other reference documents are available that provide more detailed guidance for each of the specific laws and authorities; please refer to the lists of Sources and References documents in this guide. **The responsible entity (RE) must address these laws and authorities for projects it has determined are categorical exclusions subject to Sec.58.5, or those which require preparation of an environmental assessment or an environmental impact statement.**

Please contact your Area ONAP for copies of recommended or suggested formats to use for your review or assessment.

Format of This Guide - Discussion of Laws and Authorities

The discussion of the laws and authorities follows the order of presentation in 24 CFR 58.5 and includes standards and legal requirements, assessment questions, a compliance overview, and sources and references for each Federal law or authority. A discussion of the types and standards for resources used to demonstrate compliance is provided in the Appendix.

Categorical Exclusions subject to Section 58.5

The RE may find that, upon completing the compliance review process outlined in the following pages, certain *categorical exclusions subject to section 58.5* do not invoke compliance with any of the Federal laws and authorities. Such a finding must be documented in the project Environmental Review Record (ERR), with supporting documentation. HUD has determined that, in this circumstance alone, the project converts to exempt (sec. 58.34(a)(12)). This means that neither public notification nor approval from HUD is necessary, and no further environmental review is required.

The instructions accompanying HUD's recommended format (i.e., Statutory Worksheet) make a distinction for each law and authority as to when compliance is not invoked (Status A) and when it is (Status B). **Status A** applies when compliance with the authority is achieved without adverse effects on the protected resource, without necessary mitigation or attenuation AND when no formal consultation, permit or agreement is required to establish compliance. **Status B** applies when project compliance with the authority requires formal consultation, a permit or agreement, OR when the proposal may have an adverse effect on the protected resources.

Historic Properties

Standards and Legal Requirements: Section 106 of the National Historic Preservation Act of 1966, as amended (1992); Executive Order 11593, Protection and Enhancement of the Cultural Environment, 1971 as amended; Advisory Council on Historic Preservation, Protection of Historic Properties; Recommended Approach for Consultation on Recovery of Significant Information From Archeological Sites, 36 CFR Part 800.

Assessment Questions

1. Does the project involve physical changes or could it cause changes in the character or use of historic properties in the area (e.g., demolition, construction, rehabilitation, excavation, filling, property disposition, relocation of structures, etc.)?

2. Does the project area and environs contain any properties listed on or eligible for the National Register of Historic Places? Is there an inventory of historic properties (buildings, structures, archeology sites) that is maintained by the Tribe or the State?

3. Is there a local historic commission that can provide historic information? What information on the project area does the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) have and has a survey of local historic properties been conducted?

4. Are other properties present within the boundaries or in the vicinity of the project that appear to be historic and thus require consultation with the SHPO/THPO as to their eligibility for listing on the National Register?

5. Has the Advisory Council on Historic Properties been given an opportunity to comment on any adverse effects the project will have on properties listed on or eligible for National Register listing?

6. Has the Tribe (RE) received written confirmation from the SHPO/THPO that the consultation process is completed? If a Memorandum of Agreement or Programmatic Agreement is required, have the SHPO/THPO and Advisory Council signed the agreement?

Compliance Overview

Section 106 of the National Historic Preservation Act requires Federal agencies to: (1) consider the effects of their undertakings on historic properties and (2) provide the Advisory Council on Historic Preservation with a reasonable opportunity to comment with regard to such undertakings. Compliance with Section 106 is achieved by initiating procedures the Advisory Council on Historic Preservation has outlined in 36

CFR Part 800. Section 800.2(a) recognizes the tribal certifying officer as having authority to carry out these procedural responsibilities.

The focus of Part 800 is on the RE making a determination whether a proposed project will affect buildings, structures, or places that are listed on or are eligible for listing on the *National Register of Historic Places* (NR). In making this determination, the RE must follow a detailed review process in consultation with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO). This process also provides an opportunity for interested persons and agencies to be part of the RE's decision concerning historic properties that may be affected. The current listing of SHPO's and THPO's is found at the Advisory Council's website at www.achp.gov.

It is important to remember that before approval is given to proceed with HUD funded projects, the environmental review must show that the Part 800 consultation process was completed.

Basic Steps of the Section 106 Review Process (36 CFR 800)

a. Determine whether the project is an *undertaking*, or has *no potential to cause effects* on historic properties.

The definition of an "undertaking" is comprehensive in scope. It is:

> "*a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to state or location regulation administered pursuant to a delegation or approval by a Federal agency [sec. 800.16(y)].*

There will be few situations when the RE may determine a project is not an undertaking or has no potential to cause effects. The RE must look at the nature of the undertaking when judging whether it has the potential to affect historic properties. Causing physical change is an undertaking (e.g., demolition, construction, reconstruction, rehabilitation, relocating a structure, excavation, dredging and filling, façade improvements, graffiti removal, etc.). Also, any project that has potential to cause changes in the character or use of historic properties is also an undertaking (e.g., property disposition, leasing, installation of equipment, etc.).

There may be situations where the RE makes a determination the project is *not an undertaking* or has *no potential to cause effects*. One possibility is acquiring property with no future plans of making physical changes, or disposing of the

property once purchased. The RE must document these findings in the ERR before determining that no further compliance is required.

If the project is determined to be an *undertaking*, the RE must continue the consultation process, or refer to the Programmatic Agreement if one has been executed with the SHPO/THPO. Consultation with the SHPO/THPO is documented in writing. The SHPO/THPO has 30 days from the date its receives written correspondence to provide its comments. However, section 800.3(g) allows the RE to address multiple steps in the consultation process in order to expedite the consultation process, provided the SHPO/THPO agrees and the public have an adequate opportunity to express their views.

b. Define the *area of potential effect* (APE) for the undertaking

This is the first step in the consultation process, which comes before any consideration is given to project effects. The APE is a geographic area identified by the RE (using photographs, maps or drawings) in consultation with SHPO/THPO. The size of the APE is typically influenced by the mass, scale, and nature of the proposed project. RE's should ask, could the project cause a direct or indirect change in the character or use of historic properties the may be present in the area? For example, a four-story apartment building has potential to effect the adjacent single family houses because it is significantly larger in size and is also likely to cast shadows on adjacent units. In addition, if modern building materials are used (such as concrete), they would be visually incompatible with adjacent adobe homes.

Suggested Approaches for Defining the APE by project type:

Housing rehabilitation- The property boundary is also the APE boundary.

New construction (building height will be the same as immediately adjacent buildings)- The APE includes the project site plus immediately adjacent buildings.

New construction (building height will be greater than the immediately adjacent buildings)- The APE includes the project site plus two or more rows of buildings/structures beyond the project site, depending upon the visual impact.

New construction and adjacent buildings/structures are not present- The APE includes the project site plus immediately adjacent vacant land.

c. Identify and evaluate historic properties in the APE-

1. Review Existing Information- Search the *National Register of Historic Places* (NR) for listed buildings, structures, places (www.cr.nps.gov/nr/nris). The NR is a list of districts, sites, buildings, structures, and objects that, in a formal review process by the Keeper of the National Register, were determined significant in American history, architecture, archeology, engineering, and culture. The list is

maintained by the Keeper of the National Register, U.S. Department of Interior, National Park Service

Consult with tribal historians or commissions, if available, and search any tribal, state or local inventory lists for properties determined eligible for NR listing. Consult with any tribal organization that attaches religious and cultural significance to historic properties that may be affected by the undertaking (sec. 800.2(c)(2)).

2. Survey the APE- Take photographs of buildings or structures that are 50 years of age or older. Note any distinctive architectural features, as well as modifications to buildings and structures.

3. Seek Information- Contact Indian tribes, local government, individuals or organizations likely to have knowledge about historic properties or concerns about historic properties in the local area regarding:

For buildings and structures in the APE:

Determine the date of construction.

If 50 years of age or older, determine:

The time period of its architectural design.

If its associated with a person or event significant to our history.

If the building or structure is in its original location.

If any of its original design features been altered.

Determining if archeological sites (on vacant land) are present within the APE:

Document past land uses that may have significantly altered the land (e.g., aerial photographs showing past land use, building permits issued, evidence of fill dirt or excavation).

Request a search of existing databases maintained by SHPO/THPO. If the sites is known to contain archeological artifacts, consult with the SHPO/THPO about their significance and how to proceed. If there's a high probability artifacts are present, conduct a *reconnaissance survey*.

Use a professional archeologist to perform a *reconnaissance survey* of the APE. If the survey report identifies that artifacts are present, consult with the SHPO/THPO concerning performing an *intensive survey* to classify the number, type, location, and distribution of historic resources, and record the artifacts found.

4. Evaluate the Significance of Properties That May Be Eligible for NR Listing:

A building, structure, or place is determined *eligible* for NR listing when the RE, in consultation with the SHPO/THPO, finds it meets the criteria for listing (36 CFR 60, sec. 60.4, Criteria for Evaluation). These criteria are (see Appendix I for full text):

(a) **Events** significant in the broad patterns of our history;

(b) **Persons** significant in our past;

(c) Distinctive **characteristics** of type, period, method of construction, or the work of a master, or possessing high artistic values;

(d) **Yielding information** important to history or prehistory.

In order for a property to be determined eligible on the basis of one or more of these criteria, it must possess integrity of location, design, setting, materials, workmanship, feeling and association. Integrity can be adversely affected by alterations, modifications, or relocation of buildings or structures from the original site.

NOTE: Properties that are determined eligible will not be listed on the NR unless they're nominated for listing by the tribe (or individuals), and have undergone a formal review process by the Keeper of the National Register.

5. Request the views of the SHPO/THPO concerning any further information gathering that may be necessary.

d. Determine the effect of the undertaking

The RE must make a determination, in consultation with the SHPO/THPO, that:

- No historic properties will be affected (Generally means there are no eligible or NR listed properties within the APE.)
- Historic properties are present, but the undertaking will have *no effect*.
- Historic will be affected by the undertaking.

e. Assess the effects on listed and/or eligible properties

The RE, in consultation with the SHPO/THPO, determines if there will be *no adverse effect* or *adverse effect* on historic properties. The RE must also consider the views of consulting parties and the public. The Advisory Council may also be involved in the decision. Consult 36 CFR 800.5 and 800.6, and the Section 106 flowchart in the Appendix concerning the appropriate procedures.

Sources and References

36 CFR Part 60 CFR, National Register of Historic Places, U.S.D.I. National Park Service.

How to Apply National Register Criteria for Evaluation, National Register Bulletin #15, U.S.D.I. National Park Service, www.cr.nps.gov/nr/publications/bulletins

The Secretary of Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings, Technical Preservation Services, Heritage Preservation Services, U.S.D.I. National Park Service, www2.cr.nps.gov/tps/standards/index.htm

Historical Archeological Sites and Districts, National Register Bulletin #36, U.S.D.I. National Park Service.

Recommended Approach for Consultation and Recovery of Significant Information from Archeological Sites, Advisory Council on Historic Preservation, www.achp.gov/archguide.html

Council Policy Statement: Affordable Housing and Historic Preservation, Advisory Council on Historic Preservation, www.achp.gov/afford.html

Preparing Agreement Documents, Advisory Council on Historic Preservation, www.achp.gov/agreement.html (A guide on preparing Memoranda of Understanding and Programmatic Agreements.)

Protecting Historic Properties: A Citizens Guide to Section 106 Review, Advisory Council on Historic Preservation

Floodplain Management

Standards and Legal Requirements: Executive Order 11988 of May 24, 1977 (Floodplain Management); 24 CFR Part 55, Floodplain Management, U.S. Department of Housing and Urban Development.

Assessment Questions

1. Does the project involve acquisition, construction, improvement, disposition, or financing assistance?

2. Is the project located in the 100-year floodplain (Zones A or V) mapped by the Federal Emergency Management Agency (FEMA)? Is the project a "critical action" located in the 500 year floodplain (Zone B) mapped by FEMA?

3. Is the project located in a coastal high hazard area mapped by FEMA?

4. Is the project affected by local flooding?

5. Will the project involve substantial increase in impervious surface area, and, if so, have runoff control measures been included in the design?

Compliance Overview

The purpose of Executive Order 11988 is to have Federal agencies consider alternatives to locating their projects in floodplains when other alternatives are available that achieve the same objective. This is to avoid risks to lives and loss of property that are the result of occupying a floodplain, and to avoid losing the beneficial values of floodplains. Naturally vegetated floodplains can provide a broad area to spread and slow floodwaters, thereby reducing water velocity and peak flows. This slowing of floodwaters also helps maintain water quality because it allows transported sediments to be deposited. Slower flows also allow water to infiltrate through the generally porous soil of the floodplain and recharges the groundwater.

Federal agencies are required to avoid floodplain development whenever there are *practicable alternatives* to development in the floodplain.

According to HUD regulation 24 CFR Part 55, floodplains are those land areas identified on maps published by FEMA as 100-year floodplain (Zones A or V) or 500-year floodplain (Zone B), if it's a critical action (sec. 55.2(a)(2)). Coastal high hazard areas area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. FEMA maps designate these as ZonesV1-30, VE, or V.

Section 55.20 identifies the decision making process the RE must follow to comply with the Order:

Step 1- Determine whether the proposed action is located in a 100-year floodplain.

Step 2- Publish notice of the proposal to consider an action in the floodplain (15 calendar day comment period)

Step 3- Evaluate practicable alternatives to locating the proposed action in a floodplain (*practicable* means capable of being done within existing

constraints)

Step 4- Identify the potential impacts associated with occupancy and modification of the floodplain.

Step 5- Design or modify the action to minimize adverse impacts and preserve the beneficial values of the floodplain.

Step 6- Reevaluate whether the proposed action is practicable.

Step 7- Publish notice of decision to identify why there is "no practicable alternative", the alternatives considered, and the mitigation measures being adopted. (7 calendar day comment period)

Step 8- Implement the proposed action with mitigation measures.

Most tribal jurisdictions have not been mapped by FEMA, therefore Part 55 does not apply, according to the definitions in section 55.2(b). However, if a tribe or tribally designated housing entity (TDHE) acquires property where any part of it is within a floodplain mapped by FEMA, Part 55 is applicable and the decision making process must be completed and incorporated into the project ERR

Recommendation: Even though FEMA map information is not available, the recipient may know or suspect the project area is subject to flooding. In these circumstances the recipient should consider researching the best available information to determine whether buildings or structures could be damaged by floodwaters because of their location. This is a precaution to protect both lives and property. Sources of information may include: U.S. Corps of Engineers, Community Flood Administrators, U.S. Geological Survey Maps, USDA Natural Resources Conservation Service (formerly Soil Conservation Service), state departments of water resources, county public works, local flood control or levee districts, or contract to have a special study completed.

Note: Buildings and structures located within any floodplains mapped by FEMA must have flood insurance coverage in accordance with the National Flood Insurance Program requirements. If tribal lands are mapped by FEMA, then HUD funds can only be used on projects in floodplain if the tribe is a participant in the NFIP and flood insurance is obtained. Contact the FEMA Tribal Liaison Officer in your region for additional information.

Sources and References

Map Service Center, Federal Emergency Management Agency (FEMA), www.fema.gov/maps.

National Flood Insurance Program Community Status List, FEMA, www.fema.gov/nfip. (States' listings of the cities and counties that have been mapped by FEMA and that are participants of the NFIP).

Floodplain Management Guidelines for Implementing E.O. 11988, U.S. Water Resources Council, February 10, 1978, Federal Register (43 FR 6030).

Regional Tribal Liaison Officers, FEMA Tribal Policy, www.fema.gov/library/tribal

Wetlands Protection

Standards and Legal Requirements: Executive Order 11990 of May 24, 1977 (Protection of Wetlands)

Assessment Questions

1. Does the project involve new construction, or conversion of vacant land to another use?

2. Is the project area inundated by surface or groundwater that supports aquatic plants and animals, either seasonally or year-round?

3. Has the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, or U.S. Natural Resources Conservation Service identified wetlands on the project site?

4. Are the available alternatives to locating the project or activity in the wetland?

5. Is the proposed project or activity in compliance with conditions set forth by the U.S. Army Corps of Engineers concerning permits for dredge and fill activity?

Compliance Overview

Wetlands generally include swamps, marshes, bogs, sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. The purpose of the Executive Order is to avoid, if possible, any long or short term adverse impacts associated with destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands whenever there is a *practicable alternative.*

If new construction or conversion of vacant land is being proposed, the RE should follow the decision making process in section 55.20 (24 CFR Part 55) and conclude whether there is a *practicable alternative* to destroying or modifying the wetland.

Sources and References

National Wetlands Inventory, U.S. Fish and Wildlife Service, http://wetlands.fws.gov/

U.S. Army Corps of Engineers, Section 404 Permits (Clean Water Act) (re: permits for discharges of dredge and fill materials into waters of the United States)

24 CFR Part 55, Floodplain Management, U.S. Department of Housing and Urban Development.

Wetlands Policies, www.hud.gov/cpd/cpdenvir (HUD Environment/Energy web page)

Coastal Zone Management

Standards and Legal Requirements: Coastal Zone Management Act or 1972, as amended in 1976, 1980, and 1996, particularly section 307(c) and (d).

Assessment Questions

1. Does the project involve acquisition, rehabilitation, construction, or a change of use on in or adjacent to a coastal area administered by the state under an approved coastal zone management program?

2. Has the RE certified the project is consistent with the state's coastal zone management program? Has the state received a copy of the certification and supporting documentation?

3. Has the RE received concurrence from the state on its certification?

Compliance Overview

The Act provides national policy concerning development and protection of the Nation's coastal environment. A few of goals of the Act include:

- preserve, protect, develop, and when possible, to restore or enhance the coastal resources;

- Encourage and assist states in implementing their coastal management programs, including to:

  - Manage coastal development to minimize the loss of life and property caused by:

    improper development in flood-prone, storm surge, geological hazard and erosion-prone areas and in areas "likely to be affected" by sea level rise, land subsidence, saltwater intrusion,

    destruction of natural protective features such as beaches, dunes wetlands and barrier islands.

  - Provide for public access to the coasts for recreation purposes,

When HUD funds will be used for projects proposing physical changes to properties or land within or adjacent to the coastal zone, the RE must make a determination whether the project is consistent with the state's approved coastal management program. If the project is found to be consistent, the RE must certify to its consistency and submit a copy of the certification and supporting information to the state for approval. The state will provide the public an opportunity to comment on the certification.

The RE must receive concurrence from the state (or its designated agency) before the environmental review can be completed or the decision of compliance with Part 58 is made. If the state (or its designated agency) fails to notify the RE within 6 months after receiving its copy of the certification, the state's concurrence with "the certification shall be conclusively presumed" [section 307(c)(3)].

The RE must not approve the project for environmental clearance if it is found to be inconsistent with the state's management plan. An exception is if the Secretary of Commerce finds the project is consistent with the purposes of the Act.

Sources and References

1. Office of Ocean and Coastal Resources Management, National Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, http://www.ocrm.nos.noaa.gov/czm/welcome2.html

2. State and Territory Coastal Management Program Summaries, http://www.ocrm.nos.noaa.gov/czm/czmsitelist.html

Sole Source Aquifers

Standards and Legal Requirements: Safe Drinking Water Act of 1974, particularly section 1424(e); 40 CFR Part 149-Environmental Protection Agency.

Assessment Questions

1. Is the project included within the boundaries of a sole or principal source aquifer (SSA) designated by the U.S. Environmental Protection Agency?

2. Does the project have the potential to contaminate the designated sole source aquifer?

Compliance Overview

Aquifers are underground geological formations that yield a significant amount of water to a well or spring. The RE must determine whether a project is within a Critical Aquifer Protection Area designated by EPA, and whether project activities have the potential to contaminate the aquifer. For example, drilling new wells for housing development, construction of water treatment plants, industrial development, etc.

EPA must be given the opportunity to review and make recommendations on projects that have the potential to contaminate a SSA. Contact the Office of Water for the EPA Regional Office having jurisdiction for that area.

Sources and References

National Summary of Sole Source Aquifer Designations, EPA Sole Source Aquifer Protection Program, Office of Ground Water and Drinking Water, Office of Water, U.S. Environmental Protection Agency http://www.epa.gov/OGWDW/swp/sumssa.html

Endangered Species

Standards and Legal Requirements: Endangered Species Act of 1973, as amended, particularly section 7; 50 CFR 402- Interagency Cooperation- Endangered Species Act of 1973, As Amended, U.S. Fish and Wildlife Service

Assessment Questions

1. Will the project disturb or alter existing vegetation, or create conditions which might threaten the survival of native plant communities?

2. Will it impact water resources on or adjacent to the project site?

3. Will it damage or destroy trees?

4. Will the project create conditions that are favorable to nuisance species?

Compliance Overview

Compliance with the Endangered Species Act generally concerns new construction and conversion of vacant land.

The Endangered Species Act focuses on the following Federal classifications:

Endangered- Species in danger of extinction.

Threatened- Any species likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

Critical habitat- Specific geographic areas determined to be essential to the conservation of endangered or threatened species.

Other classifications according to Fish and Wildlife Service regulations (50 CFR 402):

Proposed- Any species of fish, wildlife, or plant that is proposed in the Federal Register to be listed as endangered or threatened. And, any proposal for designation of Critical Habitat that appears in the Federal Register.

Section 7 of the Endangered Species Act requires that if Federal assistance is used for a project, a determination must be made as to whether the continued existence of a Federally-listed endangered or threatened species is likely to be affected, and whether it will result in their Critical Habitats being destroyed or adversely modified.

To ensure compliance with Section 7, consultation with the U.S. Fish and Wildlife Service is required (pursuant to 50 CFR 402). If the recipient is proposing a major construction action (i.e., Environmental Impact Statement) formal consultation with the FWS is required. If the recipient's project may affect listed species or their Critical Habitat, there is an informal consultation process that must be followed.

If HUD funds will be used for a major construction action requiring an EIS, formal consultation procedures with the FWS, beginning with section 402(c)(1) must be followed. Following is a summary of compliance steps for all other projects:

1. Make a determination whether the proposed action will alter or destroy habitat, or could have an affect on an listed or proposed species or Critical Habitat.

2. Request a species list from FWS or utilize other resource information available to develop a list of species that inhabit the project area.

3. Determine the potential impact of the action on species and/or their habitat. This determination requires: (a) consulting with resource experts, such as state or local fish and wildlife agencies with knowledge about Federal species; (b) hiring a professional biologist/botanist to prepare a biological assessment; or, (c) reviewing other environmental documents and studies for current and pertinent information.

4. Initiate informal consultation with FWS if a determination is made that species or their Critical Habitat may be affected by the project.

5. Implement any necessary mitigation measures.

Sources and References

Endangered Species Program, Division of Endangered Species, U.S.D.I. Fish and Wildlife Service http://endangered.fws.gov/

Threatened and Endangered Wildlife and Plants (Listed species and Critical Habitat) http://endangered.fws.gov/wildlife.html

Wild and Scenic Rivers

Standards and Legal Requirements: Wild and Scenic Rivers Act of 1968, as amended, particularly section 7(b) and (c)

Assessment Questions

1. Does the project include development activities?

2. Is the project located near a river or river segment that is listed on or designated for inclusion in the National Wild and Scenic Rivers System (NWSRS)?

Compliance Overview

A wild, scenic or recreational river area is included in the National Wild and Scenic Rivers System by Act of Congress or it may be designated by a State or States if the Secretary of Interior finds it meets the criteria established by the Act.

A river or segment of a river may be designated as *wild* if it is free of impoundment, has little or no evidence of human activity and is generally accessible only by trail. In order to be classified *scenic*, a river (or river segment that has been designated) is free of impoundment, there is no substantial evidence of human activity, and in some places it is accessible by road. Classification as *recreational* means the river (or a river segment) has some impoundment or diversion, there is substantial evidence of human activity, and it is readily accessible by road or railroad.

The RE must determine whether any river listed in the NWSRS, or that is designated for inclusion on it would be directly and adversely affected by development activities associated with the project. Also, if the project is located above or below a listed river, the RE must determine whether the project will invade the river management area or could unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area.

Sources and References

Wild and Scenic Rivers HOME Page, Rivers, Trails and Conservation Assistance Program, U.S.D.I. National Park Service, River http://www.nps.gov/rivers/index.html

Wild & Scenic Rivers- State-By-State Lists, Rivers, Trails and Conservation Assistance Program, U.S.D.I. National Park Service, http://www.nps.gov/rivers/wildriverslist.html

Air Quality

Standards and Legal Requirements: Clean Air Act of 1970, as amended, particularly section 176(c) and (d); 40 CFR Parts 6, 51, and 93- Environmental Protection Agency; 40 CFR Parts 9, 35, 49, 50 and 81, Environmental Protection Agency.

Assessment Questions

1. Is the project located in a geographic area that is in *attainment* or *nonattainment* with the National Ambient Air Quality Standard?

2. If in a *nonattainment* area, does the project conform to the EPA approved state implementation plan (SIP), or alternatively, the tribal implementation plan (TIP)?

Compliance Overview

The Clean Air Act is a Federal law, but the states do much of the work to implement its provisions and requirements. Each state develops state implementation plans (SIP) that contain its objectives and regulations for carrying out the Clean Air Act in their state. In 1990, the Act was amended, and section 301(d) authorizes the U.S. EPA to issue regulations specifying the provisions of the Act for which Indian tribes may be treated in the same manner as states. Currently, there are no tribal implementation plans approved by EPA. However, there are tribal regional planning organizations available for information, including: Western Regional Air Partnership, Lake Michigan Air Directors Consortia, South East States Air Resource Managers, Central States Air Resource Agencies, and the Ozone Transportation Commission.

The purpose of an implementation plan is to ensure that ambient concentrations of any of six air pollutants for which there are National Ambient Air Quality Standards (NAAQS) are below those standards. The six pollutants are: ozone, carbon monoxide, particulate matter, sulfur dioxide; lead; and nitrogen. Sources of these pollutants, include transportation vehicles, industrial facilities, and farming operations.

Sources and References

Office of Air and Radiation, U.S. Environmental Protection Agency, www.epa.gov/oar. Use this website for a listing of State air quality boards and commissions.

Office of Air and Radiation, U.S. Environmental Protection Agency, **TribalAir** website http://www.epa.gov/oar/tribal/

EPA Tribal Liaisons

Farmlands Protection

Standards and Legal Requirements: Farmland Protection Policy Act of 1981, particularly section 1540(b) and 1541; 7 CFR Part 658- U.S. Department of Agriculture.

Assessment Questions

1. Will land be developed because of the project?
2. Has the land been determined to be *prime* or *unique* farmland by the USDA. Natural Resources Conservation Service.?
3. Is it identified by state or local government as *prime* or *unique* agricultural land?

Compliance Overview

The purpose of the Farmland Protection Policy Act is to minimize the effect of Federal programs on the unnecessary and irreversible conversion of farmland to nonagricultural uses. The Act does not apply to lands already in or committed to urban development (i.e., 30 structures per 40 acres or water impoundment). Land subject to the Act is that which meets the definition of *prime* or *unique* farmlands, or is determined to be of statewide or local significance with concurrence by the Secretary of Agriculture.

Prime farmland has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops. It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable

farming methods. The land must also be available for these uses (cropland, pastureland, forestland, or other land, but not water or urban built-up land).

Unique farmland is land other than prime farmland that is used for production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or yields of specific crops.

If the RE cannot determine whether or not the land is classified as prime or unique, it should request the USDA. Natural Resources Conservation Service (NRCS) to make the determination by submitting Form AD-1006, the Farmland Conversion Impact Rating form. These forms are available at NRCS offices.

Should the project site (or any part of it) contain farmland that will be converted to another use, the RE must identify and take into account the adverse effects of its conversion, and consider alternatives that would lessen the impact. Similar consideration should be give to land of statewide or local significance.

In order to analyze the effects of converting the farmland, the RE must apply the site assessment criteria in 7 CFR 658.5(b) and (c) and record its findings on Form AD-1006. If there is a decision to approve conversion of the site, a copy of the completed Form AD-1006 should be submitted to NRCS for its data collection purposes.

Sources and References

1. Soil Survey and Resource Assessment Deputy Area, USDA - Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013, Office: Rm. 5204-S, (202) 690-4616, Fax: (202) 690-4390

2. State Offices of the USDA Natural Resource Conservation Service, http://www.nrcs.usda.gov/NRCstate.html

Noise Abatement and Control

Standards and Legal Requirements: 24 CFR Part 51, Subpart B- U.S. Department of Housing and Urban Development

Assessment Questions

1. Is a noise sensitive land development proposed (e.g., housing construction or other noise sensitive activity)?

2. Is the development within line-of-sight of a major roadway and/or, railroad? If so, is it within 1,000 feet of the roadway and/or 3,000 feet of the railroad? Is noise attenuation required?

3. Is the development within 15 miles of a military airfield or civilian airport? Is noise attenuation required?

4. Does the project require special approval from the certifying officer or should it be disapproved because of high noise levels (i.e. exceeds 75 DNL)?

Compliance Overview

Noise is unwanted sound that interferes with our normal activities such as sleeping, conversation or recreation. It can also cause hearing loss and have an adverse effect on mental health. The purpose of HUD's regulation concerning noise is to encourage suitable separation between *noise sensitive lands uses* (i.e., housing and/or other noise sensitive activities) and major noise sources (i.e., roadways, railroads, and military and civilian airports).

Section 51.101(a)(2) applies specifically to those activities subject to environmental review under Part 58, and, in particular, to the construction of housing and major rehabilitation of existing housing units.

The RE must determine whether there are any major roadways with 1,000 feet, railroads within 3,000 feet, and military or civilian airports within 15 miles of the housing project.

Sound waves travel in a straight line. Therefore, if there is a solid barrier or structure between the project site and the roadway or railroad---e.g., noise wall, natural terrain, buildings obstructing the line of sight---this barrier will attenuate noise being generated by these noise sources. These findings should be documented in the ERR.

However, if the development is within line-of-sight of either the roadway or railroad, further investigation is required to determine the level of noise exposure. This investigation requires completing a noise calculation for roadways and railroads according to guidelines provided in The Noise Guidebook (HUD-953-CPD(1)). This guidebook is issued by and available from HUD. The RE must determine whether the exterior noise level at the project site is within HUD's standard for acceptability, or that noise attenuation is required, or another project site should be selected.

Noise from airplanes is more difficult to attenuate. If there are airports within 15 miles of the project, the RE should consult with the operations supervisor for the civilian airport, and the FAA Area Office or military base concerning a military airfield. The RE should obtain information on whether or not there are flights over the project area, and the noise level being produced as a result. There are maps available to show noise contours around airfields. The highest noise levels are adjacent to runways. Airplane noise diminishes

farther away from the airfield. The noise contour maps for military airfields are published in the *Air Installation Compatible Use Zone (AICUZ)* for the base.

HUD's noise standards are based on the Day-Night Average (DNL) Sound Level System--a system of calculating noise exposure instead of measuring it with instruments. This system is a 24 hour average sound level (expressed in decibels), with an additional 10 decibels added for nighttime noise. The calculation is based upon the projected conditions that are expected to exist at a time at least 10 years beyond the date of the project approval. In order for the noise exposure from these sources to be "acceptable", the exterior noise level must be 65DNL or less. If between 65DNL and 73DNL, attenuation measures must be incorporated into construction plans. If the exterior noise level is above 75 DNL (unacceptable noise zone) , the project requires special approval from the Certifying Officer, may require an EIS, and should be considered for disapproval (See 24 CFR 51.104)

Sources and References

1. 24 CFR Part 51, Subpart B - Noise Abatement and Control

2. The Noise Guidebook (HUD-953-CPD(1)), Office of Community Planning and Development, U.S. Department of Housing and Urban Development, September 1991.

3. Contact the local airport or military airfield for information and maps.

Explosive or Flammable Operations

Standards and Legal Requirements: 24 CFR Part 51, Subpart C- U.S. Department of Housing and Urban Development.

Assessment Questions

1. Does the project include development, construction, conversion?

2. Does the project include rehabilitation or modernization of a building which increases residential densities, converts a building for habitation, or makes a vacant building habitable?

3. Are aboveground storage tanks within 1 mile of the project site that are more that 100 gallons in size?

4. Are the tanks within line of sight or is there a barrier (natural or manmade) between them and the project site?

5. Does the project require a decision by the RE's certifying officer because there is not sufficient separation between the tanks and the project site?

Compliance Overview

The regulation applies to projects for development, construction, conversion, as well as rehabilitation or modernization of buildings which increases residential densities, converts buildings for habitation, or makes vacant buildings habitable.

The purpose of this regulation is to ensure there is an *acceptable separation distance* between people and buildings from stationary aboveground storage tanks more than 100 gallons in size and that contain materials that are explosive or flammable in nature (e.g., gasoline, fuel oil, kerosene, crude oil, propane). This is to prevent injury of people and damage to property because of industrial accidents. The RE must determine if there are hazardous liquids and gases being stored within one mile of the project.

Some hazardous liquids or gases can cause explosive blasts. A 100-gallon tank can injure people and damage buildings within 115 feet; and a tank that holds1,000,000 gallons is destructive within 2,150 feet. A railroad tank car holds approximately 40,000 gallons of liquid. An explosion from a single 40,000 tank can injure people and damage buildings within a 750 foot radius.

Other hazardous liquids and gases are prone to fire. Thermal radiation from a 100-gallon tank can injure people within 107 feet; and a tank that holds 1,000,000 gallons can injure anyone within 5,000 feet, or nearly one mile.

The regulation does not apply to: high pressure gas and petroleum transmission pipelines; mobile conveyances such as barges, ships, railroad tankers and tank trucks; buried tanks or containers; high pressure natural gas transmission and liquid petroleum pipelines; employees of facilities which manage, store, or process explosive or flammable materials (U.S. Department of Labor, Occupational Safety and Health Administration covers employee safety); or individual fuel supply for one to four family housing units.

The HUD guidebook on Siting or HUD-Assisted Project Near Hazardous Facilities provides the necessary guidance for determining what are safe distances from aboveground storage tanks, and mitigation measures.

The RE's certifying officer is responsible for any approval or disapproval of projects that are affected by the presence of aboveground storage tanks.

Sources and References

1. 24 CFR Part 51, Subpart C - Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature

2. Siting or HUD-Assisted Project Near Hazardous Facilities: A Guidebook-Acceptable Separation Distances From Explosive and Flammable Hazards, Office of Environmental and Energy, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, September 1996, HUD-1060-CPD.

3. Local fire department or public safety officer.

Toxic Chemicals and Radioactive Materials

Standards and Legal Requirements: HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979.

Assessment Questions

1. Is the project site contaminated with hazardous substances and radioactive materials?

2. Is the project within one mile of a National Priority List (NPL) "Superfund" site, or 2,000 feet of a State hazardous materials site, or other known toxic site? What is the nature of the hazardous material? What is the pathway for human exposure? (i.e., surface water, soil, air, ground water)

3. Is mitigation required?

Compliance Overview

The purpose of the Policy Notice 79-33 is the protection of public health and safety. HUD assistance cannot be used to support new development for habitation at locations affected by toxic chemicals and radioactive materials. Compliance with this policy requires efforts to identify any hazardous substances and radioactive materials that may be on site or off site that could harm inhabitants. The RE must use the best available information (including federal, state, and local hazardous sites data) during the identification process, and also consult with U.S. EPA, as necessary.

The U.S. EPA recognizes four pathways for human exposure to hazardous substances and radioactive materials---*surface water, ground water, soil and air.* If it is discovered hazards are present on site, or from off site sources, determinations should made on the following bases:

> Can people come into physical contact with the contaminants (e.g., floodwaters, wetlands, outdoor recreational areas, dust, soils, school grounds, fill dirt, mill tailings)?
>
> Can contaminants be ingested (e.g., drinking water, commercial food crops)?

Can people inhale the contaminants (e.g., vapors, gases, radioactive gases (radon), airborne dust, asbestos and other particulates)?

Regulated hazardous substances lists that are maintained by the U.S. EPA include:

Comprehensive, Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund")

Extremely Hazardous Substances (EHS)

Emergency Planning and Community Right-to-Know Act (Superfund Amendments Reauthorization Act or SARA

Resources Conservation Recovery Act (RCRA)

NOTE: The *American Society for Testing and Materials* (ASTM) has developed standards for investigation and discovery of "environmental site conditions" (e.g. hazardous substances and radioactive materials) that has been recognized in court cases concerning landowner liability. One of these standards is the *Phase I Environmental Assessment.* This standard is a protocol for conducting an investigation when it is not clearly known or there is suspicion of contamination. Generally, a *Phase I Environmental Site Assessment* includes a visual inspection of the project site, an investigation of the past uses, permits that may have been issued by government entities, and whether there are environmental conditions on adjacent properties that could affect the project. The Phase I helps owners to satisfy the requirements for the "innocent landowner defense" in cases of CERCLA liability. It must be completed by a qualified professional, and the information must be current (not more than 180 days elapsed since conclusions were made)

Sources and References

U.S. EPA, Envirofacts: Data Warehouse and Applications, http://www.epa.gov/enviro

Emergency Planning and Community Right-to-Know Act (Superfund Amendments Reauthorization Act or SARA) – authorized establishment of State Emergency Response Commissions and Tribal Emergency Response Commissions.

Environmental Offices for States

Choosing An Environmentally Safe Site, Environmental Planning Division, Office of Community Viability, Community Planning and Development, U.S. Department of Housing and Urban Development, http://www.hud.gov/fha/mfh/nofa2000/safesite.pdf

Airport and Runway Clear Zones and Accident Potential Zones

Standards and Legal Requirements: 24 CFR 51, Subpart D- U.S. Department of Housing and Urban Development.

Assessment Questions

1. Is the project within 15 miles of a civilian airport or a military airfield that is regulated by the Federal Aviation Administration (FAA)?

2. Is the project located within a designated Airport Clear Zone, Accident Potential Zone, or Runway Clear Zone?

3. Is a disclosure notice required?

Compliance Overview

HUD regulation 24 CFR 51, Subpart D prohibits using HUD assistance for new construction, major or substantial rehabilitation and modernization activities if projects are located within a Clear Zone or Runway Clear Zone. However, this prohibition does not apply to minor rehabilitation or emergency assistance activities.

Clear Zones, Runway Clear Zones, and Accident Potential Zones are designated areas at the end of runways where the greatest number of airplane accidents occur (about 75%).

In addition, anytime HUD assistance will be used for the sale or purchase of existing properties in a Runway Clear Zone or Clear Zone, the buyer must be notified in writing of this, and that it may be acquired by the airport at a later date. The buyer must acknowledge receipt of this information. (See the sample "Buyer Notification Form" contained in HUD Handbook 1390.4).

Sources and References

1. 24 CFR Part 51, Subpart D - Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

2. Contact ONAP Field Office for most recent list of civilian airports and military airfields.

3. Airport Clear Zones - Civil Airport defined by FAA rule 14 CFR Part 152, military airfields DOD Instruction 4165.57 and 32 CFR Part 256.

4. A Guide to HUD Environmental Criteria and Standards Contained in 24 CFR Part 51, (Handbook 1390.4), Office of Community Planning and Development, U.S. Department of Housing and Urban Development, August 1984

5. Sources of AICUZ Data include: AICUZ study for the military air installation, Map F-Air Installation Compatible Use Zones, local planning department, Council of Governments planning agency, contact the Installation Commander.

Environmental Justice

Standards and Legal Requirements: Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.

Assessment Questions

1. Is the project site suitable for its proposed use?

2. Are there high and adverse health and environmental conditions that affect the project because of its proposed location?

3. Can these conditions be mitigated?

4. If the project is approved as proposed, are minority and low income persons being disproportionately affected in comparison to the rest of the population in the communtiy?

Compliance Overview

The Executive Order directs each Federal agency to make achieving environmental justice part of its mission by "*identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations*". Presently, there aren't any regulations for implementing the Executive Order. However, HUD has issued a Strategy Plan for Implementing Environmental Justice and uses it as a guiding principle in environmental decision making on whether the project could result in disproportionate high and adverse effects on these two populations.

During the environmental review process, health and environmental issues may arise concerning the suitability of the project site for its intended use, particularly its suitability for human habitation. Then, the RE should document how the Executive Order was given consideration in its final decision.

Sources and References

1. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994, http://www.epa.gov/docs/oejpubs/execordr.txt.html

2. Achieving Environmental Justice – A Department Strategy, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, March, 24, 1995 http://www.hud.gov/cpd/ocv/ejstrat.html

3. HUD's Environmental Justice web page- http://www.hud.gov/cpd/ocv/ej.html

APPENDIX

Types and Standards for Resources Used to Demonstrate Compliance

Resources that are used to demonstrate compliance with the laws and authorities must be credible, traceable, and supportive of the conclusions reached. There are five basic sources of information that may be used to for compliance documentation. These are:

1. FIELD OBSERVATION – A visit to the project site to make observations of the general site conditions. There should be written documentation of the conditions observed. The name and title of the observer and the date of the site visit should also be included.

2. PERSONAL CONTACT – Personal contacts are useful only when the individual contacted is an accepted authority on the subject or subjects. Documentation should include the name and title of the person contacted, the date of the conversation, and brief notes of the key points discussed. Whenever the person contacted cites reports, records, or other documents, the title, date and source of the document should be noted. Contacts can include tribal staff experienced in a particular area (e.g., engineer, planner, historian, biologist, etc.).

3. PRINTED MATERIALS – Printed materials such as comprehensive land use plans, maps, statistical surveys, and studies are useful sources of detailed information. The material must be current and reflect accepted methodologies. Environmental reviews that were completed by another governmental entity may also used if the information is relevant. Complete citations for all material must be included.

4. REVIEWER'S EXPERIENCE – Professional judgment by staff is acceptable only if their expertise is relevant to the compliance issue. For example, the reviewer may have knowledge from reviewing previous projects in the same area. Another type of relevant experience is the professional finding of the reviewer in subjects where he or she has the background to make judgments about a specific factor. Some reviewers have the expertise to evaluate soil conditions, while others will need to consult an engineer or other specialist.

5. SPECIAL STUDY – This is a study conducted for a particular project performed by qualified personnel using accepted methodologies. Some tests are relatively simple to perform but others may require elaborate equipment or personnel with additional expertise. The reviewer is responsible for obtaining assistance from others in order to have the appropriate tests or studies conducted. Examples include: an archeological reconnaissance survey; a biological assessment concerning threatened and endangered species; or, a Phase I Site Assessment to determine site contamination.

23. Supplemental Guide on Environmental Review Documentation

U.S. Department of Housing and Urban Development

Pacific/Hawaii
California State Office
450 Golden Gate Avenue
San Francisco, California 94102-3448

SUPPLEMENTAL GUIDE ON ENVIRONMENTAL REVIEW DOCUMENTATION

rev 4/99

COMPLIANCE DOCUMENTATION

The environmental review must contain written evidence of compliance with the federal laws and authorities listed in 24 CFR 58.5 and with the National Environmental Policy Act, if applicable. Such documentation must be verifiable, contain relevant base data, and support the findings being made. For example:

1. **FIELD OBSERVATION.** A site visit that does not usually involve any testing or measurements. Field observation is an important method for initial screening of the issues. However, for some environmental compliance issues it may be inadequate for final evaluation. The written record for field observation should include date of the site visit and by whom (name and title).

2. **PERSONAL CONTACT.** Personal contacts are useful when the individual contacted is an accepted authority on the subject(s) and the interview is documented. Supporting documentation should include the name and title of the person contacted and the date of the conversation.

3. **PRINTED MATERIALS.** These are useful sources of detailed information materials such as comprehensive land use plans, maps, statistical surveys, and studies. Information must be current, i.e. not so old that changing conditions make them irrelevant, and must represent accepted methodologies. Citations for the material should include enough information so that an outside reviewer can locate the specific reference.

4. **REVIEWER'S EXPERIENCE.** The professional judgment of the person making the review can be useful provided their expertise is relevant. The reviewer may have a previous knowledge from familiarity with the area, or may have professional background to make judgments about a specific factor. Provide information of the person's qualification in addition to name and position.

5. **SPECIAL STUDY.** This is a study conducted for an individual factor, and should be performed by a qualified person using accepted methodologies. Some tests are relatively simple to perform but others may require elaborate equipment or personnel with additional expertise. The reviewer is responsible for obtaining assistance from others in order to have the appropriate tests or studies conducted. A copy of the study must be appended in the environmental review record or referenced.

6. **CONSULTATION WITH OVERSIGHT AGENCIES.** Some regulations require specific consultation procedures to be completed with oversight agencies, such as for historic preservation, or endangered species when major construction activities are to occur. There must be evidence in the record that these procedures were completed.

GUIDANCE ON SCREENING FOR STATUTORY COMPLIANCE: LAWS AND AUTHORITIES LISTED AT 24 CFR 58.5

For each statute, Executive Order or regulation listed below an initial determination may be made whether or not the project requires formal consultation, permits or agreements, or will have an effect on the resources protected by the relevant Federal law or authority. Responsible entities must officially record their findings on each of the federal laws and authorities in the Environmental Review Record (ERR), and verified by source documentation mentioned above.

	COMPLIANCE NOT INVOKED	COMPLIANCE REQUIRED
Historic Properties:	The RE and the SHPO agree that there are no historic properties within the Area of Potential Effects (APE), **OR** RE and the SHPO agree that the undertaking will have No Effect on historic properties within the APE.	The project will have an Effect on historic the properties. Complete procedures, per 36 CFR 800.5,et seq.
Floodplain Management:	The project does not involve property acquisition, land management, construction or improvement within a 100 year floodplain (Zones A or V) identified by FEMA maps, **OR** does not involve a "critical action" (e.g., emergency facility, facility for mobility impaired persons, etc.) within a 500 year floodplain (Zone B). If these maps have not been published, the same finding is necessary and is to be based on data from the City/County Engineer or local Flood Control Agency.	Complete and implement the 8-step decision making process identified in 24 CFR 55. (Projects may be approved within the floodplain if the responsible entity determines there is no practicable alternative.)
Wetlands Protection:	The project does not involve new construction within or adjacent to a wetland identified by or delineated on maps issued by the U.S. Department of Interior, Fish and Wildlife Service.	Complete and implement the 8-step decision making process identified in 24 CFR 55. (Projects may be approved if there is no practicable alternative outside the wetland area. However, such activities require a permit from the U.S. Corps of Engineers under provision of the Clean Water Act).

	COMPLIANCE NOT INVOKED	COMPLIANCE REQUIRED
Airport Clear Zones and Accident Potential Zones:	The project is not within an FAA-designated civilian airport Runway Clear Zone (RCZ), or within a military airfield Clear Zone (CZ) or Accident Potential Zone (APZ), based upon information from the airport or military airfield administrator identifying the boundaries of such zones; **OR** the project involves only minor rehabilitation, **OR** the project involves only the sale or purchase of an existing property in a RCZ or CZ (**NOTE:** The responsible entity shall notify buyer of this fact and obtain buyer's signature acknowledging receipt of this information (24 CFR 58.6(c).	It is HUD policy not to provide any development assistance, subsidy or insurance in RCZs or CZs unless the project will not be frequently used or occupied by people, and the airport operator provides written assurances that there are no plans to purchase the project site.
Environmental Justice:	The project site is suitable for its proposed use; **AND/OR** the project won't be adversely affected by a pre-existing environmental condition	Site suitability is a concern; **AND/OR** the project adversely affects the environment with respect to low income or minority populations. Avoid such impacts or mitigate them to the extent practicable. Consider whether compliance with NEPA may be necessary because there are extraordinary circumstances and conditions at or affecting the location of the project [Section 58.35(c)].

24. ERR Guide #9: Emergency Determination Guide

ERR Guide #9

Emergency Determination Guide
(24 CFR Part 58.33)

Project Name: _____ **Project Id. No.:** _____

Emergency Situation	
Emergency Measures to be Taken	
If Significant Environmental Impact	*Describe Impact:* *CEQ Contacted? Yes No*

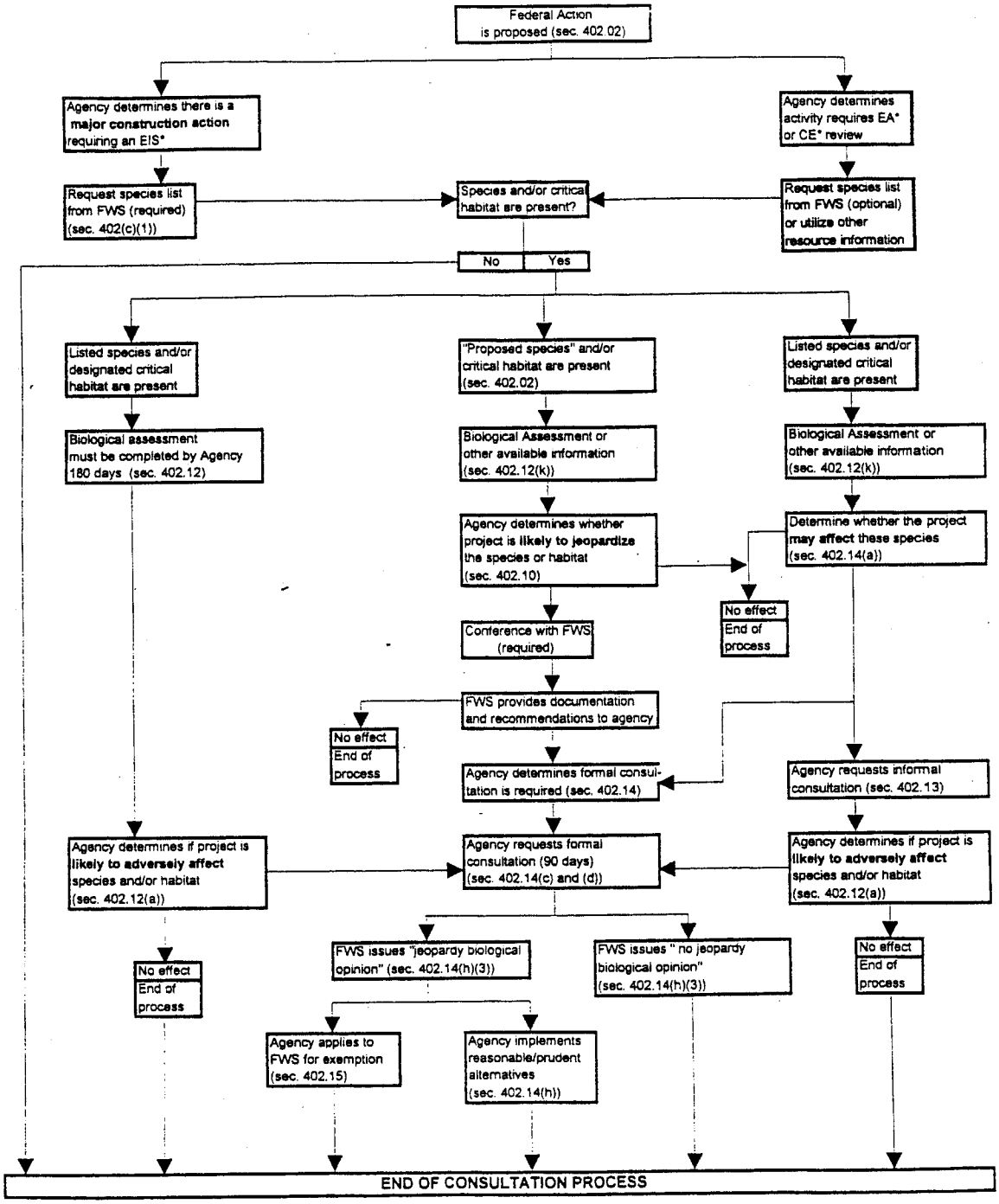
Reviewer Name (Sign) _____

Reviewer Name (Print) _____ Date: _____

25. Consultation Procedures Concerning Federally Threatened and Endangered Species and Designated Critical Habitat

Consultation Procedures Concerning Federally Threatened and Endangered Species and Designated Critical Habitat

(50 CFR Part 402, USDI Fish and Wildlife Service (FWS))



* EIS - Environmental Impact Statement
EA - Environmental Assessment
CE - Categorically Excluded

HUD, Pacific/Hawaii Office, Environmental Office
5/14/98

26. Sample Notices for Activities in a 100-Year Floodplain and Wetland

Sample Notice for Early Public Review of a Proposal to Support Activity in the 100-Year Floodplain and Wetland

To: All Interested Agencies, Groups, and Individuals

This is to give notice that the Housing Authority of the City of Riverside (RHA) will be submitting an application to HUD for disposition of several parcels which were previously developed as scattered sites under the Homeownership Program as Projects IL1-18 and IL1-20, Riverside, Illinois.

This notice is required by Section 2(a)(4) of Executive Order 11900 for Floodplain Management, and by Section 2(b) of Executive Order 11990 for the Protection of Wetlands, and is implemented by HUD Regulations found at 24 CFR 55.20(b) for the HUD action that is within and/or affects a floodplain or wetland.

Three of the parcels proposed for disposition are located within the floodplain area. All structures were previously demolished; and RHA has no current plan to rebuild units on these sites. The addresses are 1201 North 11th Street (two parcels) and 1117-1199 Water Street (one parcel).

This notice with a request for comment was mailed to the regional office of the Federal Emergency Management Agency and the state office of Environmental Protection.

Additional information may be obtained by contacting: Ryan Campbell, Administrative Coordinator at 271-0498.

Written comments must be received by the RHA at the following address on or before (month, day, year) [allow 15 days at a minimum]: Riverside Housing Authority, 700 N. 20th Street, Riverside, Illinois, 52308, Attention: Meredith Thornton, Executive Director.

Date Issued

Sample Notice and Public Explanation of a Proposed Activity in the 100-Year Floodplain and Wetland

To: All Interested Agencies, Groups, and Individuals

This is to give notice that the Housing Authority of the City of Riverside (RHA) has conducted an evaluation as required by Executive Orders 11988 and 11990 in accordance with HUD regulations at 24 CFR 55.20 to determine the potential affect that its activity in the floodplain and wetland will have on the environment. The proposed project is the disposition of three (3) parcels which were previously developed as scattered sites under the Homeownership Program known as Projects IL1-18 and IL1-20, Riverside, Illinois.

RHA has determined that it has no practicable alternative other than to approve the sale of vacant floodplain/wetland parcels. This activity will have no significant impact on the environment for the following reasons:

1. The property is currently vacant land. The transfer of ownership of vacant land will not change the property characteristics in any way.
2. Maintaining ownership of the property will cause the RHA to spend limited resources to maintain property that no longer can be used for public housing purposes. Disposing of the property will provide revenue and also cost effective use of the RHA's limited resources for the benefit of other viable, occupied public housing units.
3. Selling the property may allow a re-use that will generate more property tax revenue, which is of greater benefit to the community than leaving the property vacant and unused.

Written comments must be received by the RHA at the following address on or before (month, day, year) [allow 7 days at a minimum]: Riverside Housing Authority, 700 N. 20th Street, Riverside, Illinois, 52308, Attention: Meredith Thornton, Executive Director.

Date Issued

27. National Register of Historic Places Criteria for Evaluation

National Register of Historic Places
Criteria for Evaluation (36 CFR 60)

The National Register's standards for evaluating the significance of properties were developed to recognize the accomplishments of all people who have made a contribution to our country's history and heritage. The criteria are designed to guide State and local governments, Federal agencies, and others in evaluating potential entries in the National Register.

Criteria for Evaluation

The quality of significance in American history, architecture, archeology, engineering and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and:

a. that are associated with **events** that have made a significant contribution to the broad patterns of our history; or

b. that are associated with the lives of persons significant in our past; or

c. that embody the **distinctive characteristics** of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

d. that have yielded, or may be likely to yield, **information** important in prehistory or history.

Criteria considerations: Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historical buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

a. a religious property deriving primary significance from architectural or artistic distinction or historical importance; or

b. a building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

c. a birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his productive life; or

d. a cemetery that derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

e. a reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

f. a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or

g. a property achieving significance within the past 50 years if it is of exceptional importance.

Information on documentation of properties and use of the Criteria for Evaluation may be obtained by writing: National Register of Historic Places, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240.

28. Sample Letters

Date

Name of Agency
Address of Agency

SUBJECT: Request for Information
Name of Project or Activity

The ***(name of IHBG recipient)*** is proposing to undertake construction activities using federal funds from the U.S. Department of Housing and Urban Development. A description of the project follows:

> ***Provide a complete project description and location. Include a legal description of the site, if possible, and a map of the project area. The project description should include all related activities such as infrasctructure, access roads, utility extensions, site improvements, etc. The information provided in this section should allow a person unfamiliar with the project and location to make a reasonable determination of environmental impact.***

As part of the development process, the ***(tribe)*** is conducting an environmental review in accordance with the regulations at 25 CFR part 58. This letter is written to request your agency's review and comments regarding whether the planned project activity will have a significant impact on the environment and whether any mitigating actions are needed. Specifically, your agency should review any compliance issues relating to ***(identify the environmental factor and/or statutory provision)***.

Your timely written response to this inquiry is appreciated. If additional information is needed, please contact ***(name of project coordinator or environmental officer)*** at ***(phone number)***.

Sincerely,

Tribal Chairperson or Designated Official

TRIBAL OR TDHE LETTERHEAD

Date:

MEMORANDUM TO: Environmental Review Record

FROM:

GRANT NUMBER:

The purpose of this memorandum is to document that **the (name of tribe or TDHE)** has determined, in accordance with the citation from 24 CFR 58.35(b) referenced below, that the following activities are categorically excluded from National Environmental Policy Act requirements and are not subject to the other provisions of law or authorities cited in 24 CFR 58.5.

Activity	Regulatory Citation	Budgeted Amount

Total: $

Attached to this memorandum is a determination regarding compliance with the requirements of 24 CFR 58.6 for the listed activities.

Attachment

TRIBAL OR TDHE LETTERHEAD

Date:

MEMORANDUM TO: Environmental Review Record

FROM:

GRANT NUMBER:

The purpose of this memorandum is to document that **the (name of tribe or TDHE)** has determined, in accordance with the citation from 24 CFR 58.34 referenced below, that the following activities are exempt from National Environmental Policy Act requirements and other provisions of law or authorities cited in 24 CFR 58.5.

Activity	Regulatory Citation	Budgeted Amount

Total: $

Attached to this memorandum is a determination regarding compliance with the requirements of 24 CFR 58.6 for the listed activities.

Attachment

F9. Preparing the EIS

F9. Preparing the Environmental Impact Statement (EIS)

Summary

Occasionally the environmental review process requires the preparation and filing of an EIS. Most often this phase is not required. The EIS is the culmination of environmental responsibilities under NEPA. While the vast majority of HUD assisted projects have neither the scale nor the potential impact to warrant an EIS, situations may arise where an EIS is required. Traditionally, project issues necessitating an EIS have been cause to automatically reject the project site or disapprove a project. However, the Responsible Entity should exercise some judgment in weighing the costs and benefits associated with continuing on through the EIS preparation versus choosing an alternate site or terminating the project.

When the environmental assessment uncovers issues which seem to necessitate an EIS, the Responsible Entity should meet with the Area ONAP Administrator to discuss the course of action. Consultation with the HUD Environmental Offices is available upon request. The Responsible Entity may need additional support or just some guidelines from the HUD perspective. The Responsible Entity will want to investigate the existence of previous environmental impact statements which can be adopted or re-cited. Use of prior impact statements will reduce the level of effort required for the current environmental review.

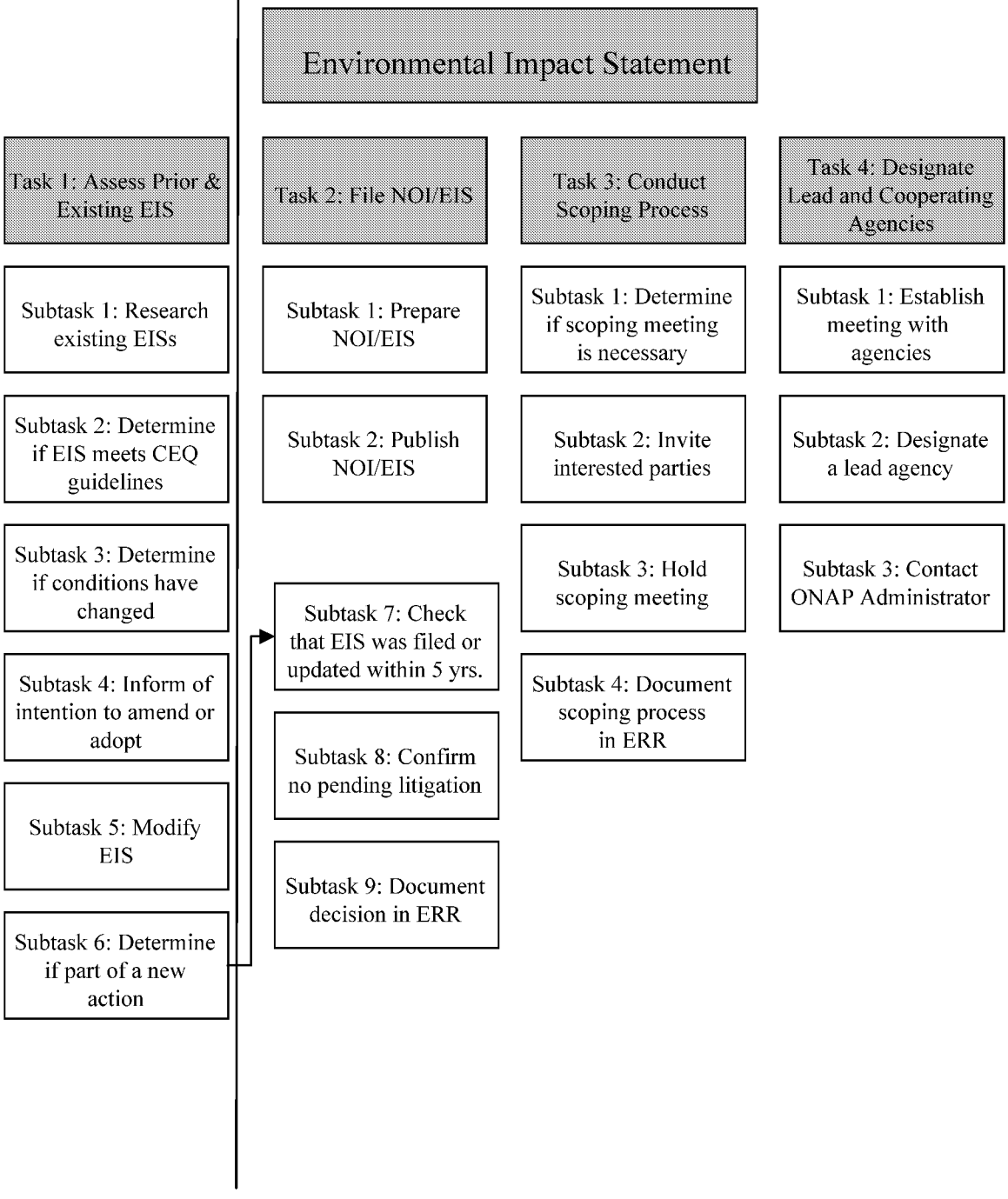
The checklist on the left is intended for the Responsibility Entity to reference while preparing and filing an EIS.

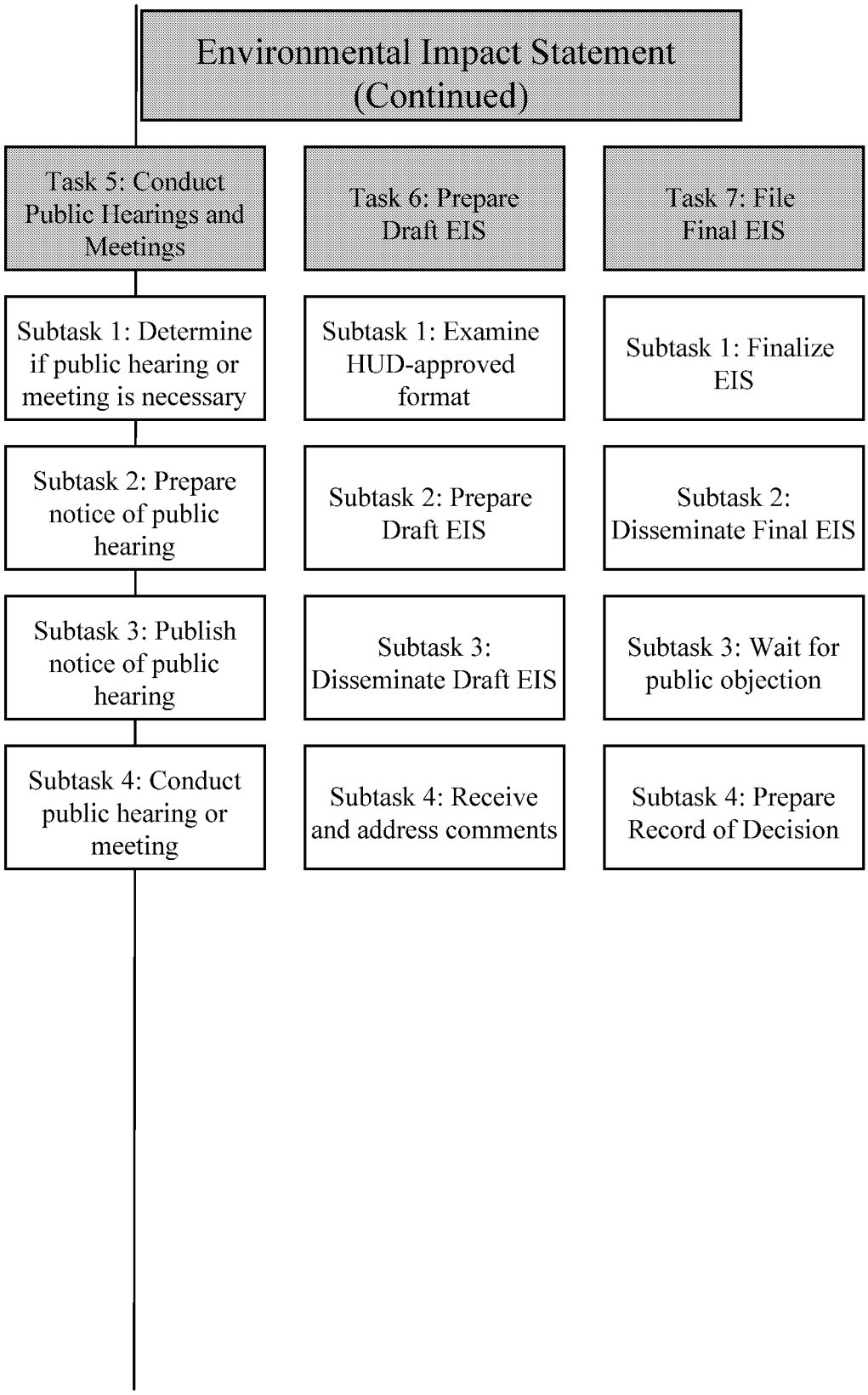
The graphic on the following pages summarizes the tasks and subtasks of this phase. The first task is to investigate whether an existing EIS can be used for the current project. This will significantly reduce the time and resources required for completing this phase. If a new or supplemental EIS is needed, the Responsible Entity proceeds to filing an NOI/EIS. The Responsible Entity must then decide to hold a scoping meeting in order to bring all interested parties together. Soon thereafter, a Lead Agency (the agency designated to lead the EIS process) is designated to lead the EIS process based on the criteria at 40 CFR Part 1501.5 (c). The intervention of the HUD Field Office may be required if no Lead Agency is established.

EIS Checklist:

- Assess prior and existing EIS
- File NOI EIS
- Prepare supplemental EIS
- Conduct scoping process
- Designate lead and cooperating agencies
- Conduct public hearings and meetings
- Prepare draft EIS
- File final EIS
- Publish ROD

Public involvement is a crucial element to completing an EIS. All interested parties must be given a forum for expressing their concerns and asking questions. After the concerns and comments of the public have been addressed, the Responsible Entity will proceed to draft and finalize an EIS. The EIS will be disseminated to a number of agencies and offices and must be made available to all those requesting a copy.




Environmental Impact Statement (Continued)
Task 5: Conduct Public Hearings and Meetings
Subtask 1: Determine if public hearing or meeting is necessary
Subtask 2: Prepare notice of public hearing
Subtask 3: Publish notice of public hearing
Subtask 4: Conduct public hearing or meeting
Task 6: Prepare Draft EIS
Subtask 1: Examine HUD-approved format
Subtask 2: Prepare Draft EIS
Subtask 3: Disseminate Draft EIS
Subtask 4: Receive and address comments
Task 7: File Final EIS
Subtask 1: Finalize EIS
Subtask 2: Disseminate Final EIS
Subtask 3: Wait for public objection
Subtask 4: Prepare Record of Decision

Task 1: Assess Prior & Existing EIS

Subtask 1: Research existing EISs

Subtask 2: Determine if EIS meets CEQ guidelines

Subtask 3: Determine if conditions have changed

Subtask 4: Inform of intention to amend or adopt

Subtask 5: Modify EIS

Subtask 6: Determine if part of a new action

Task 1: Assess Prior and Existing EIS (24 CFR Part 58.52,58.53)

The use of a prior or existing EIS or EA or related analyses can be a significant time-saver. The Responsible Entity should make every effort to examine the use or adoption of an existing EIS. Two opportunities are possible for using previous EIS documents:

- Adoption of other agencies' draft or final EISs. For an EIS to be adopted, it must meet NEPA requirements and reflect the current conditions of the project and site.
- Use of prior HUD or RE EISs. An EIS previously filed for a project pursuant to Part 58 can be used if the project is not a new, major Federal action, the prior final EIS was filed within five years, and no litigation is pending in connection with the prior EIS.

The following subtasks can be of assistance when completing this task:

Subtask 1: Research existing EISs: The Responsible Entity should search through existing EISs to determine if any draft or final EISs are relevant to the project area or to the type of project. The Responsible Entity can contact the EPA for a listing of all EISs and to get further information on statements. The HUD Environmental Officer may also be aware of other assessments or EISs that may be relevant to the project.

Subtask 2: Determine if the EIS meets CEQ guidelines: An EIS prepared by another agency cannot be adopted unless it was prepared in accordance with NEPA CEQ guidelines at 40 CFR Parts 1500-1508. All deadline, reporting, and participation requirements must have been followed in the EIS's preparation.

Subtask 7: Check that EIS was filed or updated within 5 yrs.

Subtask 8: Confirm no pending litigation

Subtask 9: Document decision in ERR

Subtask 3: Determine if environmental conditions have changed: If the EIS does meet NEPA CEQ guidelines, the Responsible Entity must determine whether the environmental conditions or circumstances for this project are substantially different from the project for which the EIS was originally prepared. The Responsible Entity will proceed based on this determination. If conditions have not changed, the Responsible Entity does not have to refile or recirculate the EIS and can proceed to obtaining approval of the RROF.

If conditions have changed, the RE must proceed to the following.
Subtask 4: Inform existing EIS Lead Agency of intent to amend and adopt:
The RE must inform the existing EIS Lead Agency of it's intention to amend or to adopt the existing EIS.

Subtask 5: Modify EIS to fit current conditions: If the environmental conditions or circumstances have changed substantially since the original EIS, the Responsible Entity should:

- Inform the Lead Agency on the original EIS of the intent to amend and adopt the EIS
- Prepare a supplemental draft EIS following the tasks for preparation of an EIS
- Complete the clearance process for the RROF
- The original, unmodified EIS does not need to be refiled or recirculated.

Subtask 6: Determine if the project is part of a new major Federal action:
The proposed project cannot be part of a new major Federal action for a prior EIS to be used. Major Federal actions are defined as actions with effects that may be significant and are potentially subject to Federal control and responsibility. Actions include new and continuing activities, such as projects and programs entirely or partially financed, conducted, regulated, or approved by Federal agencies.

Federal actions generally fall into one of four major categories:

1. Adoption of official policy
2. Adoption of formal plans upon which future agency actions will be based
3. Adoption of programs to implement a specific policy or plan
4. Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as Federally-assisted activities.

For the purposes of this guidebook, only the fourth category is relevant.

If the Responsible Entity decides that the project does not fall in the fourth category, and is therefore not part of a new major Federal action, that decision must be included in the ERR. The decision should include:

- References to the prior EIS showing its evaluation of the environmental effects relevant to the proposed project
- A supplemental evaluation of any relevant environmental factors which were not addressed in, or have changed significantly since, the previous EIS
- Analysis showing that the proposed project is consistent with the location, usage, and infrastructure assumptions made in the EIS
- Documentation showing that all mitigating measures called for in the prior EIS have been, or are currently being, implemented.

If the project is found to be part of a new major Federal action, the prior EIS cannot be used.

Subtask 7: Determine if the prior EIS was filed and updated within last five years: The prior EIS must have been filed within the past five years and must have been updated to include:

- Revisions covering any significant changes to the assumptions in the prior EIS
- New environmental issues, data, legislation, or regulations which may effect the proposed project area.

Subtask 8: Confirm that no litigation connected with the prior EIS is pending: If any litigation is pending against the prior EIS and the decisions and actions made in relation to the EIS, the Responsible Entity can not use that EIS. The Responsible Entity is also discredited if any final finding of inadequacy has been made against it.

Subtask 9: Document decision in ERR: The Responsible Entity must document its decision to adopt or use an existing EIS in the ERR. ERR Guide #11: *EIS Adoption Form*, (Appendix F) can be used to record the decision to adopt. Include all supporting evidence collected in the subtasks above.

Task 2: File NOI/EIS

Subtask 1: Prepare NOI/EIS

Subtask 2: Publish NOI/EIS

Task 3: Conduct Scoping Process

Subtask 1: Determine if scoping meeting is necessary

Subtask 2: Invite interested parties

Subtask 3: Hold scoping meeting

Subtask 4: Document scoping process in ERR

Task 2: File NOI/EIS (24 CFR Part 58.55)

If an EIS or Supplemental EIS is to be prepared, the Responsible Entity must first prepare and circulate a Notice of Intent to Prepare an Environmental Impact Statement (NOI/EIS). The NOI/EIS is a public notice that an EIS will be prepared and circulated.

Subtask 1: Prepare NOI/EIS: Use the sample NOI/EIS format in Appendix F for guidance in preparing the NOI/EIS. The NOI/EIS should provide information on:

- The project and possible alternatives
- The proposed scoping process for the EIS including the time, date, and location of the scoping meeting if applicable
- The name and address of the person within the Responsible Entity who can answer questions about this action.

Subtask 2: Publish NOI/EIS: Publish the NOI/EIS in the local news media at least 15 days prior to holding a scoping meeting, if one will be held.

Task 3: Conduct Scoping Process (24 CFR Part 58.56)

The scoping process is an attempt to bring all interested parties together with the purpose of identifying significant issues and eliminating insignificant or previously evaluated impacts from consideration, surfacing potential conflicts, and agreeing upon an approach for the evaluation of a proposed action. The scoping process is not necessary if an EIS is being adopted.

Subtask 1: Determine whether a scoping meeting is necessary: The Responsible Entity should decide whether to hold a scoping meeting based on the following considerations:

- Magnitude of project
- Controversy involved with the project
- Complexity of information
- Extent of previous public involvement.

Subtask 2: Invite interested parties: All Federal, State, and local agencies, Indian tribes, or individuals who might be affected by the proposed actions should be invited to the scoping meeting. The Recipient and the ONAP Administrator should also be present at the meeting.

Subtask 3: Hold the scoping meeting: The Responsible Entity must wait at least 15 days from the dissemination of the NOI/EIS before holding a scoping meeting to allow for the full participation of all interested parties. The Scoping meeting should be conducted in accordance with goals at 40 CFR Part 1501.7.

Subtask 4: Document scoping process in ERR: The Responsible Entity must include the minutes of the scoping meeting, a list of participants, and any outcomes of the scoping process in the ERR. A copy of the published NOI/EIS or other announcement of the scoping meeting must also be included. If a decision was made not to scope, this decision must be documented and supported.

Task 4: Designate Lead and Cooperating Agencies

Subtask 1: Establish meeting with agencies

Subtask 2: Designate a lead agency

Subtask 3: Contact ONAP Administrator

Task 4: Designate Lead and Cooperating Agencies (24 CFR Part 58.57)

NEPA encourages interagency cooperation throughout the environmental review process in order to address all potential impacts and to avoid the delay caused by waiting until the public comment period on the draft EIS is over before soliciting the comments of other concerned agencies. Failure to include all interested parties early in the NEPA process can lead to adversarial and destructive actions during the comment period. However, if multiple agencies are involved in an EIS effort, a Lead Agency must be determined that will assume primary responsibility for preparing the EIS and coordinate the participation of other agencies. All other agencies involved in the EIS, due either to their having jurisdiction by law or special expertise in a relevant environmental issue, are cooperating agencies. The Lead Agency is responsible for:

- Requesting the participation of concerned agencies as cooperating agencies
- Using the analysis and proposals of cooperating agencies to the maximum extent possible in preparing the EIS
- Preparing the EIS in compliance with the guidelines of 40 CFR Part 1502.
- The cooperating agencies are responsible for:
- Participating in the scoping process
- At the request of the lead agency, developing information and preparing environmental analysis including portions of the EIS
- Providing staff to assist the lead agency in subject matter expertise.

Subtask 1: Hold meeting with other involved agencies: All Federal and local agencies that have an interest in the EIS should meet early in the EIS process.

The purpose of this meeting is to designate a Lead Agency. A Lead Agency will be required if more than one Federal agency is involved in the same action or is involved in activities that are directly related to the action because of functional or geographical dependence. This meeting will also allow the agencies to agree upon their respective roles in terms of the scope of the EIS and develop a cooperative approach toward preparation of the EIS.

Subtask 2: Designate a Lead Agency: The outcome of meeting with other concerned agencies is to designate a Lead Agency to supervise preparation of the EIS. The Responsible Entity should decide upon the Lead Agency based upon the following criteria:

- Relative magnitude of each agency's interest and involvement
- Project approval/disapproval authority
- Environmental expertise relevant to the project.

Subtask 3: Contact ONAP for determination: If the Responsible Entity and another involved agency cannot reach an agreement, the Responsible Entity will contact the ONAP Area Administrator. The ONAP Area Administrator will assist in determining the Lead Agency in a timely and efficient manner. If no Lead Agency designation can be agreed upon, ONAP and the HUD Assistant Secretary for Community Planning and Development will escalate the request for a Lead Agency determination to the Council on Environmental Quality.

Task 5: Conduct Public Hearings and Meetings

Subtask 1: Determine if public hearing or meeting is necessary

Subtask 2: Prepare notice of public hearing

Subtask 3: Publish notice of public hearing

Subtask 4: Conduct public hearing or meeting

Items to include in the notice of public hearing:

- The date, time, place, and purpose
- Brief description of the project (estimated cost, project area, etc.)
- Statement that persons will be allowed to voice their concerns on relevant environmental issues
- RE's name and address
- CO's name and address
- Available documentation

Task 5: Conduct Public Hearings and Meetings (24 CFR Part 58.59)

Public hearings and meetings should be scheduled if the project warrants them. Public hearings and meetings are critical to meeting NEPA's requirements for an open and public process of evaluation and decision making.

If a public hearing is to be held, a notice of public hearing must be published in the local news media 15 days prior to the hearing date.

Subtask 1: Determine whether a public hearing is necessary: The Responsible Entity should consider the following factors when contemplating public hearings:

- Magnitude of project
- Controversy involved with the project
- Complexity of information
- Extent of previous public involvement.

If the Responsibility Entity determines that a public hearing is necessary, a hearing should be scheduled. In scheduling the hearing, the Responsible Entity should choose a time and location that will facilitate active participation from all concerned parties.

Subtask 2: Prepare Notice of Public Hearing: A notice of public hearing should be prepared for every meeting to encourage full public participation as directed by NEPA. You may use the checklist of items to include in the notice of public hearing at left.

Subtask 3: Publish notice of public hearing: Publish the notice in the local news media at least 15 days before the hearing date. Also, mail the notice to any individual who has requested it and to any organization that has regularly requested such notices.

Subtask 4: Conduct public hearing or meeting: Conduct the public hearing allowing for open and reasonable discussion of issues. The Responsible Entity is responsible for keeping minutes. The meeting minutes will become part of the ERR. The Responsible Entity should follow up on any issues raised during the hearing and address relevant issues in the EIS.

Task 6: Prepare Draft EIS

Subtask 1: Examine HUD-approved format

Subtask 2: Prepare Draft EIS

Subtask 3: Disseminate Draft EIS

Subtask 4: Receive and address comments

Task 6: Prepare Draft EIS (24 CFR Part 58.60)

A draft EIS should be prepared using the HUD-approved format and according to the CEQ guidelines provided in 40 CFR Part 1502.

Subtask 1: Examine approved format for the EIS: If the Responsible Entity has never been involved with preparing an EIS, the Responsible Entity should consult previous EISs, particularly those done either for HUD projects similar to the current activity or for non-HUD projects in the same area. Consult the format guidelines at 40 CFR Part 1502 for specific guidance on length and coverage.

Subtask 2: Prepare draft EIS: The draft EIS is an EIS document that is complete to the fullest extent possible but that has not been circulated or modified through public comment. It should be prepared by the Lead Agency with comment from the participating agencies according to the agreed scope. Public meetings may be held throughout preparation of the draft statement to solicit further comment.

Subtask 3: Disseminate draft EIS: The draft EIS should be made available for comment as follows:

- Five copies to EPA headquarters
- Five copies to the EPA Regional office
- Copies available in the Recipients office
- Copies available in the Responsible Entity's office
- Copies available in the ONAP office
- Copies or summaries available to individuals or organizations upon request

Subtask 4: Receive and address comments: After the draft EIS is completed, there is a 45 day review period. The Responsible Entity is required to respond to all the letters they get and address the concerns in the EIS.

Task 7: File Final EIS

Subtask 1: Finalize EIS

Subtask 2: Disseminate Final EIS

Subtask 3: Wait for public objection

Subtask 4: Prepare Record of Decision

Task 7: File Final EIS (24 CFR Part 58.60)

A final EIS should be prepared using the HUD-approved format and according to the CEQ guidelines provided in 40 CFR Part 1502. The final EIS addresses comments received on the draft EIS.

Following this task, the Responsible Entity should proceed to Obtaining Approval and Release of Funds, Phase IV of the environmental review process covered in Section V of this manual.

Subtask 1: Finalize EIS: The Responsible Entity revises the EIS and writes it up in final form. The final EIS includes discussion of issues raised, reasonable opposing arguments to those issues, and the Responsible Entity's stance on the issue.

Subtask 2: Disseminate Final EIS: The final EIS should be made available for comment as follows:

- Five copies to EPA headquarters
- Five copies to the EPA Regional office
- Copies available in the recipients office
- Copies available in the Responsible Entity's office
- Copies available to individuals or organizations upon request
- One copy to the State
- One copy to the ONAP Area Office
- One copy to the HUD library at Headquarters.

- If substantial changes are proposed for the project or if circumstances surrounding the project change significantly, a supplemental EIS should be prepared in accordance with 40 CFR Part 1502.2.

Subtask 3: Wait for public objection: There is a 60 day waiting period during which community members or government officials dissatisfied with the responses to their concerns in the final EIS can legally challenge the project.

Subtask 4: Prepare the Record of Decision: The Record of Decision (ROD) is the final decision making tool for the EIS required under NEPA. The ROD should be prepared in accordance with 40 CFR Part 1505.2. A ROD is a concise public document that can be incorporated in any other required record. The ROD should:

- State the decision (defined as actions to be taken based upon the EIS)
- Discuss all of the alternatives that were considered before reaching this decision
- Identify any mitigating activities or programs that have been adopted and, if applicable, explain why actions aren't being taken.

G. Related Laws and Authorities

Appendix G: Related Laws and Authorities

Related Laws and Authorities G-1
A Five Minute Look at Section 106 Review G-6
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Advisory Council on Historic Preservation, 36 CFR Part 800 ..... G-8
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Related Laws and Authorities

NEPA

The purpose of this act was to establish a national policy for the environment and to provide for the establishment of a Council on Environmental Quality (CEQ).

24 CFR Part 50: Protection and Enhancement of Environmental Quality

This rule represents HUD's implementation of responsibilities for environmental review and decision making under NEPA and other related environmental laws. This rule also establishes the use of an EA, FONSI, or EIS for decision points in a project, specifies activities which are categorically excluded from this and other cited rules.

Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA)

This act reorganizes and simplifies HUD's system of housing assistance to Native Americans by eliminating several separate programs of assistance and replacing them with a single block grant program made directly to the tribes. In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide Federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance.

24 CFR Part 58 (1996): Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

This document contains instructions and guidance for Recipients of HUD assistance or their designated Responsible Entities for assuming environmental responsibility and obtaining certification for a Request for Release of Funds. The document provides procedures that comply with CEQ regulations while incorporating the functional requirements of HUD.

Executive Order 11593, Protection and Enhancement of the Cultural Environment, 1971

Establishes that Federal agencies shall do the following:

- Administer the cultural properties under their control in a spirit of stewardship for future generations
- Initiate measures necessary to direct their policies, plans and programs ways that Federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored and maintained for the inspiration and benefit of the people
- In consultation with the Advisory Council on Historic Preservation, (16 U.S.C. 470i), institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-Federally owned sites of historical, architectural or archaeological significance.

Executive Order 11988, Floodplain Management Section

Requires Federal facilities to avoid, to the highest extent possible, adverse impacts associated with the occupancy and modifications of floodplains. A project proposed for construction in a floodplain must demonstrate that there is no reasonable alternative to the floodplain location.

24 CFR Part 55: HUD Procedures for the Implementation of Executive Order 11988, Floodplain Management

The Flood Disaster Protection Act of 1973, Executive Order 11988 and Executive Order 11990 set forth requirements concerning floodplains and wetlands.

This rule addresses HUD compliance with Executive Order 11988 on floodplain management and implements the principles of the Unified National Program for Floodplain Management for all HUD projects except those explicitly excluded. The primary purpose of 11988 and this rule is to "avoid direct or indirect support of floodplain development." The decision making process for floodplain management is an eight-step process which includes public notices and evaluation of alternatives (24 CFR Part 55.20). HUD may conduct an area-wide compliance and issue approval for all sites in a stated floodplain.

Proposed construction, located or to be located within a Special Flood Hazard Area, is discouraged regardless of whether or not the property is, or will be, covered by flood insurance.

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, sections 2 and 5)

The purpose of this Order was to avoid, to the extent possible, the long- and short-term adverse impacts associated with the destruction or modification of wetlands. The Order also called for organizations to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.

Section 10 of Executive Order 11990 authorizes that responsibilities, applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, may be assumed by the applicant if the applicant has also assumed all of the responsibilities for the environmental review.

The Executive Order directs the applicant to take certain steps to avoid possible long- and short-term impacts associated with the destruction or modification of new wetlands.

The regulation also provides an eight-step decision making process that must be followed for all sites involving wetlands.

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451), as amended, section 107

The Coastal Zone Management Act (CZMA) encourages the states to develop water use programs for the coastal zone. The encouragement takes the form of grants to coastal states which comply with the CZMA's coastal resource improvement program.

Specifically, the Act requires that "each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs." Under implementing regulations from the Department of Commerce, the determination of which Federal activities "directly affect" the coastal zone is to be made by the Federal agency (15 CFR Sec. 930.33).

In coastal areas, consultation with the State agency responsible for the coastal management program is advisable at the rehabilitation program design stage. This should eliminate the need for subsequent consultations except when the state management plans or policies are revised.

Sole Source Aquifers (EPA, 40 CFR Part 149)

The Safe Drinking Water Act of 1974 requires that where EPA has identified by Federal Register publication a sole source aquifer whose contamination would create a significant hazard for public health, "no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any such project which the (EPA) determines may contaminate such aquifer…"

The existence of an aquifer is identified by publication in the Federal Register. Rehabilitation would not usually result in contamination of an aquifer. However, consultation with EPA at the program design stage could eliminate the need for any further consultations.

Farmlands Protection Policy of 1981 (Department of Agriculture, 7 CFR Part 658)

This Act requires Federal agencies to use criteria established by the Soil Conservation Service (SCS) to identify and take into account the adverse affects of "Federal programs" on the preservation of farmland; consider alternative actions; and assure that such Federal programs are, to the extent practicable, consistent with State, local, and private farmland protection programs and policies. "Federal program" means "those activities or responsibilities of a department … that involve undertaking, financing, or assisting construction or improvement projects …" Under existing SCS regulations, prime farmland already committed to urban development as evidenced by zoning or a comprehensive plan is excluded from review (see 7 CFR Sec. 658.2) and an agency cannot withhold assistance on the basis of a farmland review (Sec. 658.3). The Act currently has little effect on rehabilitation activities.

The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974, Section 3

The act requires Federal agencies building or permitting the building of reservoirs to notify the Secretary of the Interior when such activities might destroy important archaeological, historic, or scientific data.

CFR Parts 1500 - 1508, Council on Environmental Quality Regulations

This document contains the Council's regulations for implementation of NEPA (section 102.2) in a manner supportive of enhanced decision making rather than of mere document generation. The regulations are directed at Federal agencies and specify timely and efficient application.

24 CFR Part 402, Section 7 Consultation Endangered Species Act Rules

The Endangered Species Act is administered by the U.S. Fish and Wildlife Service. Department of Interior USFWS should be contacted as soon as it is determined that an environmental assessment is required.

If USFWS believes the site is a habitat of an endangered species, a biological assessment is made to determine if the species is present.

If the species is present at the site, a Section 7 consultation must be done. USFWS will also respond if the site includes any designated wetlands.

The Section 7 consultation can be a lengthy process which may include all or part of the following steps: biological assessment, informal consultation, resolution conference, early consultation, formal consultation.

The National Historic Preservation Act of 1966 (16 U.S.C. 470 h-2) Sections 106 and 110

This Federal law provides for a National Register of Historic Places to include districts, sites, buildings, structures and objects significant in American history, architecture, archaeology and culture. These items may bear national, state or local significance.

36 CFR Part 800, Protection of Historic Properties (Section 106 NHPA)

This regulation proscribes that the Federal Agency (HUD) bears the responsibility to apply the Criteria of Effect defined in 800.9. The intent is to protect sites and buildings that are on the National Register of Historic Places or are eligible to be included on it and to protect listed properties in the vicinity which might be adversely impacted. Contact must be made with the State Historic Preservation Officer (SHPO) and the Advisory Council in Historic Properties should be given time to comment.

Section 106 of the National Historic Preservation Act of 1966, as amended, mandates that agencies with jurisdiction over Federally assisted activities afford the President's Advisory Council on Historic Preservation and the State Historic Preservation Officer (SHPO) a reasonable opportunity for comment on the project's impact on historic properties. Contact SHPO to obtain review requirements if a structure is over 50 years old or in or adjacent to a Historic District or if a project involves soil disturbance (Archaeological).

24 CFR Part 51, Environmental Criteria and Standards - Flammable/Explosive Hazards, Clear Zones and Runways, and Noise Abatement and Control

This regulation details HUD's responsibilities in granting assistance and approving environmental reviews with regard to existing environmental hazards. Subpart B of this rule specifies that noise exposure and sources be an integral consideration within the environmental assessment of a site and that HUD will not support noise-sensitive projects in areas with unacceptable noise exposure.

Environmental Justice, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations

The premise of this Order is that Federal agencies should identify and address disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority and low-income populations. In addition, the Order requires all Federal agencies to develop agency-wide strategies to implement these principles.

A Five Minute Look at Section 106 Review

A FIVE-MINUTE LOOK AT SECTION 106 REVIEW

About the Section 106 review process

What is Section 106 review? This term refers to the Federal review process designed to ensure that historic properties are considered during Federal project planning and execution. The review process is administered by the Advisory Council on Historic Preservation, an independent Federal agency.

Who established Section 106? The Congress did, as part of the National Historic Preservation Act of 1966 (NHPA). NHPA, strengthened and expanded by several subsequent amendments, today has become the cornerstone of this country's historic preservation policy.

Why was Section 106 created? NHPA was enacted because of public concern that so many of our Nation's historic resources were not receiving adequate attention as the Government sponsored much-needed public works projects. In the 1960s, Federal preservation law applied only to a handful of nationally significant properties, and Congress recognized that new legislation was needed to protect the many other historic properties that were being harmed by Federal activities.

What does NHPA say? Section 106 of NHPA requires that every Federal agency "take into account" how each of its undertakings could affect historic properties. An agency must also afford the Council a reasonable opportunity to comment on the agency's project.

What is a Federal "undertaking"? This term includes a broad range of Federal activities: construction, rehabilitation and repair projects, demolition, licenses, permits, loans, loan guarantees, grants, Federal property transfers, and many other types of Federal involvement. Whenever one of these activities affects a historic property, the sponsoring agency is obligated to seek Council comments.

What is a historic property? For purposes of Section 106, any property listed in or eligible for the National Register of Historic Places is considered historic.

The National Register is this country's basic inventory of historic resources and is maintained by the Secretary of the Interior. The list includes buildings, structures, objects, sites, districts, and archeological resources. The listed properties are not just of nationwide importance; most are significant primarily at the State or local level. It is important to note that the protections of Section 106 extend to properties that possess significance but have not yet been listed or formally determined eligible for listing. Even properties that have not yet been discovered (such as archeological properties), but that possess significance, are subject to Section 106 review.

Figure 1: A brief look at Section 106 review

How does Section 106 review work? The standard review process is spelled out in Federal regulations issued by the Advisory Council on Historic Preservation. Entitled "Protection of Historic Properties," the regulations appear in the U.S. Code of Federal Regulations at 36 CFR Part 800. The process involves five basic steps, as follow.

Step 1: Identify and evaluate historic properties

The Federal agency responsible for an undertaking begins by identifying the historic properties the undertaking may affect. To do this, the agency first reviews background information and consults with the State Historic Preservation Officer (SHPO) and others who may know about historic properties in the area. Based on this review the agency determines what additional surveys or other field studies may be needed, and conducts such studies.

If properties, that is, districts, sites, buildings, structures, or objects, are found that may be eligible for inclusion in the National Register of Historic Places, but have not yet been included in the Register, the agency evaluates them against criteria published by the National Park Service, which maintains the Register. This evaluation is carried out in consultation with the SHPO, and if questions arise about the eligibility of a given property, the agency may seek a formal determination of eligibility from the Secretary of the Interior. If a property has already been included in the National Register, of course, further evaluation is not ordinarily necessary. Section 106 review gives equal treatment to properties that have already been included in the Register and those that are eligible for inclusion.

Step 2: Assess effects

If historic properties, that is, properties included in or eligible for inclusion in the National Register, are found, the agency then assesses what effect its undertaking will have on them. Again the agency works with the SHPO, and considers the views of others. The agency makes its assessment based on criteria found in the Council's regulations, and can make one of three determinations:

- No effect: the undertaking will not affect historic properties.
- No adverse effect: the undertaking will affect one or more historic properties, but the effect will not be harmful;
- Adverse effect: the undertaking will harm one or more historic properties.

Step 3: Consultation

If an adverse effect will occur, the agency consults with the SHPO and others in an effort to find ways to make the undertaking less harmful. Others who are consulted, under various circumstances, may include local governments, Indian tribes, property owners, other members of the public, and the Council. Consultation is designed to result in a Memorandum of Agreement (MOA), which outlines measures agreed upon that the agency will take to reduce, avoid, or mitigate the adverse effect. In some cases the consulting parties may agree that no such measures are available, but that the adverse effects must be accepted in the public interest.

If consultation proves unproductive, the agency or the SHPO, or the Council itself, may terminate consultation. The agency must submit appropriate documentation to the Council and request the Council's written comments.

Step 4: Council comment

The Council may comment during step 3 of the process, by participating in consultation and signing the resulting MOA. Otherwise, the agency obtains Council comment by submitting the MOA to the Council for review and acceptance. The Council can accept the MOA, request changes, or opt to issue written comments. If consultation was terminated, the Council issues its written comments directly to the agency head, as the agency had requested.

Step 5: Proceed

If an MOA is executed, the agency proceeds with its undertaking under the terms of the MOA. In the absence of an MOA, the agency head must take into account the Council's written comments in deciding whether and how to proceed.

Alternative approaches

The Section 106 regulations also spell out three alternative means of complying with Section 106. These are:

- Programmatic Agreements among an agency, the Council, one or more SHPOs, and others;
- Counterpart regulations developed by an agency and approved by the Council;
- An agreement between the Council and a State, which substitutes a State review system for the standard Section 106 review process.

About the Council

What is the Advisory Council on Historic Preservation? The 20-member Council is composed of a chairman, vice chairman, 6 other private citizen members, one Native American or Native Hawaiian, a governor, and a mayor--all appointed by the President of the United States. The Council also includes the Secretaries of the Interior and Agriculture, the heads of four Federal agencies designated by the President, the Architect of the Capitol, the chairman of the National Trust for Historic Preservation, and the president of the National Conference of State Historic Preservation Officers. The Council members usually meet four times during the year. Day-to-day business of the Council involving Section 106 review is conducted by an executive director and a professional staff of historians, architects, archeologists, planners, lawyers, and administrative personnel.

Section 106 participants

Who initiates Section 106 review? The Federal agency involved in the proposed project or activity is responsible for initiating and completing the Section 106 review process. Under certain circumstances, local governmental bodies may act as the responsible agency. The agency works with the State Historic Preservation Officer (an official appointed in each State or territory to administer the national historic preservation program) and the Council to do so. In this fact sheet, the term "agency" is used to mean the responsible unit of government, be it Federal or local. There can be other participants in Section 106 review as well. At times, local governments, representatives of Indian tribes, applicants for Federal grants, licenses or permits, and others may join in the review process when it affects their interests or activities.

How long does Section 106 review take? The timetable for Steps 1 through 3 (identification through consultation) are up to the agency, as the Council is not typically involved at this point. Once the agency submits a signed MOA (with needed documentation) for Council review, that review can take up to 30 days. If there is no MOA, the agency can request issuance of Council comments within 60 days of when the Council receives required documentation.

For more information

Where is more information available? This brief look at Section 106 review cannot tell the whole story. For complete information about the Council's review process, consult the Council's regulations at 36 CFR Part 800, published September 2, 1986. [51 FR 31115] The Council has available without charge an annotated version of its regulations, which aids understanding of the regulatory language, as well as a booklet entitled *Section 106, Step-by-Step*, which provides a more detailed introductory look at the review process. A complete list of publications in the "Working with Section 106" series is available from the Council.

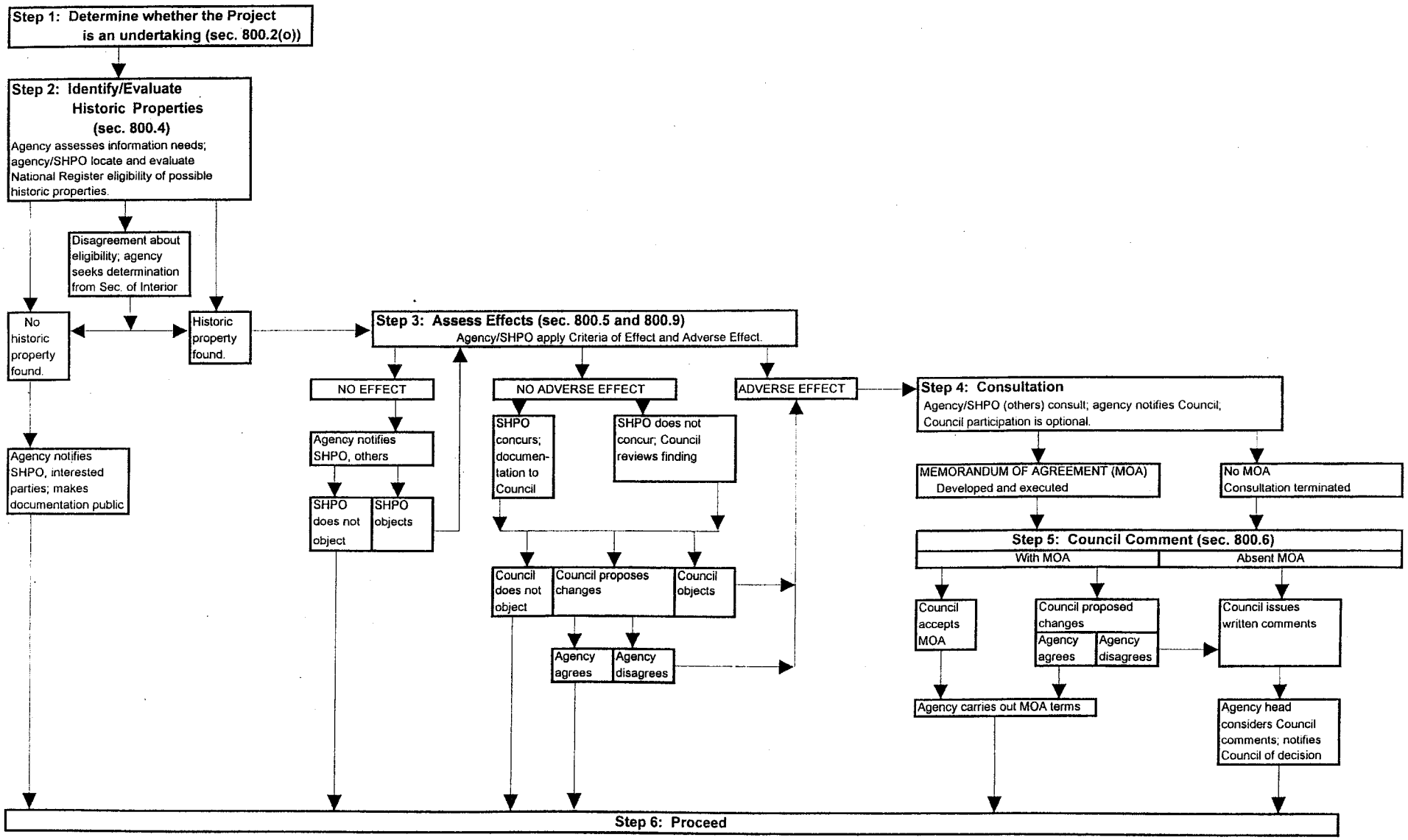
For easy-to-understand training on Section 106 review, the Council offers a 3-day course, "Introduction to Federal Projects and Historic Preservation Law," which is offered in many locations around the country each year. The course is designed for the Section 106 novice and explains, step-by-step, what actions are required by Federal, State, and local officials to meet the requirements of the law.

For more information, please write the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Telephone: (202) 606-8503 (executive offices) and (202) 606-8505 (Section 106 review and training offices).

Revised October 1992

The Basic Steps of the Section 106 Review

THE BASIC STEPS OF SECTION 106 REVIEW



HUD, Pacific/Hawaii Office, 5/12/98

Advisory Council on Historic Preservation, 36 CFR Part 800

Review and Summary of New
Final 36 CFR Part 800

On December 12, 2000, the Council's new regulations governing how Federal agencies take historic properties into account under Section 106 of the National Historic Preservation Act were published in the Federal Register. They will go into effect on January 11, 2001. Until then, the current Section 106 regulations, dating from June 17, 1999, will remain in force. While the revised regulations incorporate important changes that respond to public comments, the core elements of the Section 106 process have been maintained. Also retained are the major streamlining improvements that were a product of the June 1999 revisions. The revised regulations remove operational impediments in the Section 106 review process and clarify certain provisions and terms. Finally, there were a number of technical and informational edits throughout the rule.

The full text of the revised regulations and their preamble can be found in the Federal Register at 65 F.R. 77698-77739 and is attached as a PDF document (which requires the freely available Adobe Acrobat Reader to read). Also attached is a redline/strikeout version of the former regulation and a cross reference index (both in Word Perfect format) which document all changes that have been made. Shortly, a hard copy of the revised regulations (with a portion of the preamble) will be mailed to each Federal Preservation Officer, Tribal Historic Preservation Officer, and State Historic Preservation Officer.

The text of the revised regulations is also available on the Council's Web site, www.achp.gov. The Council is reviewing the Section 106 guidance materials on the Web site to make sure that those materials will be current by the effective date of the revised regulations. In the interim, if you have questions please feel free to contact us.

Among the changes to the regulations are:

Increased flexibility for programmatic agreements. Section 800.14(b) was amended by adding a new section authorizing the Council to create "prototype programmatic agreements" that can be executed by a Federal agency and a SHPO/THPO without Council participation. This will permit routine programmatic agreements that follow an accepted model to be completed more expeditiously. The Council expects this new section to be employed quickly, as it will be particularly useful in the context of programs like the Community Development Block Grants.

Clarification of the role of Indian tribes and Tribal Historic Preservation Officers. Section 800.2(c)(2) was completely rewritten to better

distinguish the roles of Indian tribes that have assumed SHPO responsibilities on their own tribal lands under Section 101(d)(2) of NHPA, from those of Indian tribes that have not. These amendments do not change the substantive role of non-101(d)(2) tribes or any other party in the Section 106 process under the proposed rule, but simply provide for a clearer rule. Section 800.2(c)(2)(ii) was also amended to clarify that NHPA requires agency consultation with Indian tribes and Native Hawaiian organizations that attach religious and cultural significance to historic properties regardless of whether such properties are located on or off tribal land.

More flexibility to involve applicants. Section 800.2(c)(5) was amended to resolve a major problem regarding the participation of applicants for Federal assistance or approval in the Section 106 process. Under the change, an agency may authorize a group of applicants to initiate the Section 106 process, rather than being required to grant individual authorizations.

Clarification of undertakings covered by the Section 106 process. Section 800.3(a)(1) was amended to better state the premise that only an undertaking that presents a "type of activity" that has the potential to affect historic properties requires review. The previous language implied that making such a determination related to the circumstances of the particular undertaking, rather than the more generic analysis of whether the type of undertaking had the potential to affect historic properties.

Revision of the role of invited signatories. Section 800.6(c)(2) was rewritten to remove confusion about the ability of a Federal agency to invite other parties to become formal signatories to memoranda of agreement, and to clarify their rights and responsibilities as invited signatories.

Revision of the use of Environmental Impact Statements to comply with Section 106. Section 800.8(c)(4) was rewritten to more clearly state the actions a Federal agency must take in making a binding commitment in National Environmental Policy Act (NEPA) documents to carry out measures to avoid, minimize, or mitigate adverse effects to historic properties and thereby use the NEPA process to comply with Section 106 requirements.

Redefinition of the role of the Council when improving the operation of Section 106. Section 800.9(d)(2) was amended to require the Council to participate in Section 106 reviews in a manner parallel to SHPOs/THPOs when the Council decides to join individual case reviews which it would not otherwise engage in. This occurs when the Council has determined that Section 106 responsibilities are not being properly carried out by an agency or SHPO/THPO and the Council's participation can remedy the problem.

PART 800—PROTECTION OF HISTORIC PROPERTIES

Subpart A—Purposes and Participants

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800.1 Purposes.
800.2 Participants in the section 106 process.

Subpart B—The Section 106 Process

800.3 Initiation of the section 106 process.
800.4 Identification of historic properties.
800.5 Assessment of adverse effects.
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800.7 Failure to resolve adverse effects.
800.8 Coordination with the National Environmental Policy Act.
800.9 Council review of section 106 compliance.
800.10 Special requirements for protecting National Historic Landmarks.
800.11 Documentation standards.
800.12 Emergency situations.
800.13 Post-review discoveries.

Subpart C—Program Alternatives

800.14 Federal agency program alternatives.
800.15 Tribal, State and Local Program Alternatives. [Reserved]
800.16 Definitions.
APPENDIX A—CRITERIA FOR COUNCIL INVOLVEMENT IN REVIEWING INDIVIDUAL SECTION 106 CASES

AUTHORITY: 16 U.S.C. 470s.

SOURCE: 64 FR 27071, May 18, 1999, unless otherwise noted.

Subpart A—Purposes and Participants

§ 800.1 Purposes.

(a) *Purposes of the section 106 process.* Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the Agency Official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

(b) *Relation to other provisions of the Act.* Section 106 is related to other provisions of the Act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106 process. Guidelines, policies and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) *Timing.* The Agency Official must complete the section 106 process "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license." This does not prohibit Agency Official from conducting or authorizing nondestructive project planning activities before completing compliance with Section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The Agency Official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

§ 800.2 Participants in section 106 process.

(a) *Agency Official.* It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an Agency Official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The Agency Official has approval authority for the undertaking and can commit the

Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the Agency Official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The Agency Official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) *Professional standards.* Section 112(a)(1)(A) of the Act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) *Lead Federal agency.* If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the Agency Official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) *Use of contractors.* Consistent with applicable conflict of interest laws, the Agency Official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The Agency Official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the Agency Official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) *Consultation.* The Agency Official shall involve the consulting parties described in §800.2(c) in findings and determinations made during the section 106 process. The Agency Official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation. The Council encourages the Agency Official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) *Council.* The Council issues regulations to implement section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to Agency Officials on individual undertakings and programs that affect historic properties.

(1) *Council entry into the section 106 process.* When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the Act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) *Council assistance.* Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) *Consulting parties.* The following parties have consultative roles in the section 106 process.

(1) *State Historic Preservation Officer.* (i) The State Historic Preservation Officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the Act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal

lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with § 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to § 800.3(f)(3).

(2) *Tribal Historic Preservation Officer.* (i) The Tribal Historic Preservation Officer (THPO) appointed or designated in accordance with the Act is the official representative of an Indian tribe for the purposes of section 106. If an Indian tribe has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the Act, the Agency Official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(ii) If an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the Act, the Agency Official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. For the purposes of subpart B of this part, such tribal representative shall be included in the term "THPO."

(3) *Indian tribes and Native Hawaiian organizations.* Section 101(d)(6)(B) of the Act requires the Agency Official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(i) The Agency Official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the Agency Official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(ii) The Federal government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part is intended to alter, amend, repeal, interpret or modify tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or to preempt, modify or limit the exercise of any such rights.

(iii) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal government and Indian tribes. The Agency Official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(iv) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the Act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(v) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an Agency Official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover

all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The Agency Official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(vi) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the Act may notify the Agency Official in writing that it is waiving its rights under §800.6(c)(1) to execute a Memorandum of Agreement.

(4) *Representatives of local governments.* A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the Agency Official for purposes of section 106.

(5) *Applicants for Federal assistance, permits, licenses and other approvals.* An applicant for Federal assistance or for a Federal permit, license or other approval is entitled to participate as a consulting party as defined in this part. The Agency Official may authorize an applicant to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the Agency Official. The Agency Official shall notify the SHPO/THPO and other consulting parties when an applicant is so authorized.

(6) *Additional consulting parties.* Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) *The public*—(1) *Nature of involvement.* The views of the public are essential to informed Federal decisionmaking in the section 106 process. The Agency Official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) *Providing notice and information.* The Agency Official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the Agency Official to consider in decisionmaking.

(3) *Use of agency procedures.* The Agency Official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

Subpart B—The Section 106 Process

§ 800.3 Initiation of the section 106 process.

(a) *Establish undertaking.* The Agency Official shall determine whether the proposed Federal action is an undertaking as defined in §800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) *No potential to cause effects.* If the undertaking does not have the potential to cause effects on historic properties, the Agency Official has no further obligations under section 106 or this part.

(2) *Program alternatives.* If the review of the undertaking is governed by a Federal agency program alternative established under §800.14 or a Programmatic Agreement in existence before the effective date of these regulations, the Agency Official shall follow the program alternative.

(b) *Coordinate with other reviews.* The Agency Official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archaeological Resources Protection Act and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the Agency Official may use information developed for other reviews under Federal, State or tribal law to meet the requirements of section 106.

(c) *Identify the appropriate SHPO and/or THPO.* As part of its initial planning, the Agency Official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The Agency Official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The Agency Official shall then initiate consultation with the appropriate Officer or Officers.

(1) *Tribal assumption of SHPO responsibilities.* Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the Act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the Act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

(2) *Undertakings involving more than one State.* If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) *Conducting consultation.* The Agency Official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) *Failure of the SHPO/THPO to respond.* If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the Agency Official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the section 106 process, the Agency Official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) *Consultation on tribal lands.* Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the Agency Official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

(e) *Plan to involve the public.* In consultation with the SHPO/THPO, the Agency Official shall plan for involving the public in the section 106 process. The Agency Official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with § 800.2(d).

(f) *Identify other consulting parties.* In consultation with the SHPO/THPO, the Agency Official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The Agency Official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) *Involving local governments and applicants.* The Agency Official shall invite any local governments or applicants that are entitled to be consulting parties under § 800.2(c).

(2) *Involving Indian tribes and Native Hawaiian organizations.* The Agency Official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) *Requests to be consulting parties.* The Agency Official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) *Expediting consultation.* A consultation by the Agency Official with the SHPO/THPO and other consulting parties may address multiple steps in §§ 800.3–800.6 where the Agency Official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in § 800.2(d).

§ 800.4 Identification of historic properties.

(a) *Determine scope of identification efforts.* The Agency Official shall consult with the SHPO/THPO to:

(1) Determine and document the area of potential effects, as defined in § 800.16(d);

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The Agency Official should address concerns raised about confidentiality pursuant to § 800.11(c).

(b) *Identify historic properties.* Based on the information gathered under § 800.4(a), and in consultation with the SHPO/THPO and any Indian tribe or native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the Agency Official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) *Level of effort.* The Agency Official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The Agency Official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's Standards and Guidelines for Identification provide guidance on this subject. The Agency Official should also consider other applicable professional, State, tribal and local laws, standards and guidelines. The Agency Official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) *Phased identification and evaluation.* Where alternatives under consideration consist of corridors or large

land areas, or where access to properties is restricted, the Agency Official may use a phased process to conduct identification and evaluation efforts. The Agency Official may also defer final identification and evaluation of historic properties if it is specifically provided for in a Memorandum of Agreement executed pursuant to § 800.6, a Programmatic Agreement executed pursuant to § 800.14(b), or the documents used by an Agency Official to comply with the National Environmental Policy Act pursuant to § 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the Agency Official shall proceed with the identification and evaluation of historic properties in accordance with §§ 800.4(b)(1) and (c).

(c) *Evaluate historic significance*—(1) *Apply National Register Criteria.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the Agency Official to reevaluate properties previously determined eligible or ineligible. The Agency Official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) *Determine whether a property is eligible.* If the Agency Official determines any of the National Register Criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the Agency Official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the Agency Official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the Agency Official to obtain a determination of eligibility.

(d) *Results of identification and evaluation*—(1) *No historic properties affected.* If the Agency Official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the Agency Official shall provide documentation of this finding as set forth in § 800.11(d) to the SHPO/THPO. The Agency Official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking. If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the Agency Official's responsibilities under section 106 are fulfilled.

(2) *Historic properties affected.* If the Agency Official finds that there are historic properties which may be affected by the undertaking or the SHPO/THPO or the Council objects to the Agency Official's finding under § 800.4(d)(1), the Agency Official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

§ 800.5 Assessment of adverse effects.

(a) *Apply criteria of adverse effect.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the Agency Official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The Agency Official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(1) *Criteria of adverse effect.* An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(2) *Examples of adverse effects.* Adverse effects on historic properties include, but are not limited to:

(i) Physical destruction of or damage to all or part of the property;

(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines;

(iii) Removal of the property from its historic location;

(iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

(3) *Phased application of criteria.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the Agency Official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to § 800.4(b)(2).

(b) *Finding of no adverse effect.* The Agency Official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of § 800.5(a)(1) or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) *Consulting party review.* If the Agency Official proposes a finding of no adverse effect, the Agency Official shall notify all consulting parties of the finding and provide them with the documentation specified in § 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) *Agreement with finding.* Unless the Council is reviewing the finding pursuant to § 800.5(c)(3), the Agency Official may proceed if the SHPO/THPO agrees with the finding. The Agency Official shall carry out the undertaking in accordance with § 800.5(d)(1). Failure of the SHPO/THPO to respond within 30 days from receipt of the finding shall be considered agreement of the SHPO/THPO with the finding.

(2) *Disagreement with finding.* (i) If the SHPO/THPO or any consulting party

disagrees within the 30-day review period, it shall specify the reasons for disagreeing with the finding. The Agency Official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to § 800.5(c)(3).

(ii) The Agency Official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the Agency Official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30-day review period specify the reasons for disagreeing with the finding and request the Council to review the finding pursuant to § 800.5(c)(3).

(iii) If the Council on its own initiative so requests within the 30-day review period, the Agency Official shall submit the finding, along with the documentation specified in § 800.11(e), for review pursuant to § 800.5(c)(3). A Council decision to make such a request shall be guided by the criteria in appendix A to this part.

(3) *Council review of findings.* When a finding is submitted to the Council pursuant to § 800.5(c)(2), the Agency Official shall include the documentation specified in § 800.11(e). The Council shall review the finding and notify the Agency Official of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documented finding from the Agency Official. The Council shall specify the basis for its determination. The Agency Official shall proceed in accordance with the Council's determination. If the Council does not respond within 15 days of the receipt of the finding, the Agency Official may assume concurrence with the Agency Official's findings and proceed accordingly.

(d) *Results of assessment*—(1) *No adverse effect.* The Agency Official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of § 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the Agency Official's responsibilities under section 106 and this part. If the Agency Official will not conduct the undertaking as proposed in the finding, the Agency Official shall reopen consultation under § 800.5(a).

(2) *Adverse effect.* If an adverse effect is found, the Agency Official shall consult further to resolve the adverse effect pursuant to § 800.6.

§ 800.6 Resolution of adverse effects.

(a) *Continue consultation.* The Agency Official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.

(1) *Notify the Council and determine Council participation.* The Agency Official shall notify the Council of the adverse effect finding by providing the documentation specified in § 800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

(A) The Agency Official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National Historic Landmark; or

(C) A Programmatic Agreement under § 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the Agency Official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the Agency Official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation with Council participation is conducted in accordance with § 800.6(b)(2). (iv) If the Council does not join the consultation, the Agency Official shall proceed with consultation in accordance with § 800.6(b) (1).

(2) *Involve consulting parties.* In addition to the consulting parties identified under § 800.3(f), the Agency Official, the SHPO/THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The Agency Official shall invite any individual or organization that will assume a specific role or responsibility in a Memorandum of Agreement to participate as a consulting party.

(3) *Provide documentation.* The Agency Official shall provide to all consulting parties the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) *Involve the public.* The Agency Official shall make information available to the public, including the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c). The Agency Official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The Agency Official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. The Agency Official should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the Section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of § 800.2(d) are met.

(5) *Restrictions on disclosure of information.* Section 304 of the Act and other authorities may limit the disclosure of information under §§ 800.6(a)(3) and (4). If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the Agency Official believes that there are other reasons to withhold information, the Agency Official shall comply with § 800.11(c) regarding the disclosure of such information.

(b) *Resolve adverse effects*—(1) *Resolution without the Council.* (i) The Agency Official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The Agency Official may use standard treatments established by the Council under § 800.14(d) as a basis for a Memorandum of Agreement.

(iii) If the Council decides to join the consultation, the Agency Official shall follow § 800.6(b)(2).

(iv) If the Agency Official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a Memorandum of Agreement. The Agency Official must submit a copy of the executed Memorandum of Agreement, along with the documentation specified in § 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of section 106 and this subpart.

(v) If the Agency Official, and the SHPO/THPO fail to agree on the terms of a Memorandum of Agreement, the Agency Official shall request the Council to join the consultation and provide the Council with the documentation set forth in § 800.11(g). If the Council decides to join the consultation, the Agency Official shall proceed in accordance with § 800.6(b)(2). If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with § 800.7(c).

(2) *Resolution with Council participation.* If the Council decides to participate in the consultation, the Agency Official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under § 800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the Agency Official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a Memorandum of Agreement.

(c) *Memorandum of Agreement.* A Memorandum of Agreement executed and implemented pursuant to this section evidences the Agency Official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. A Memorandum of

Agreement executed pursuant to § 800.6(b)(1) that is filed with the Council shall be considered to be an agreement with the Council for the purposes of Section 110(1) of the Act. The Agency Official shall ensure that the undertaking is carried out in accordance with the Memorandum of Agreement.

(1) *Signatories.* The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The Agency Official and the SHPO/THPO are the signatories to a Memorandum of Agreement executed pursuant to § 800.6(b)(1).

(ii) The Agency Official, the SHPO/THPO, and the Council are the signatories to a Memorandum of Agreement executed pursuant to § 800.6(b)(2).

(iii) The Agency Official and the Council are signatories to a Memorandum of Agreement executed pursuant to § 800.7(a)(2).

(2) *Invited signatories.* (i) The Agency Official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a Memorandum of Agreement concerning such properties.

(ii) The signatories should invite any party that assumes a responsibility under a Memorandum of Agreement to be a signatory.

(iii) The refusal of any party invited to become a signatory to a Memorandum of Agreement pursuant to § 800.6(c)(2)(i) or (ii) does not invalidate the Memorandum of Agreement.

(3) *Concurrence by others.* The Agency Official may invite all consulting parties to concur in the Memorandum of Agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the Memorandum of Agreement does not invalidate the Memorandum of Agreement.

(4) *Reports on implementation.* Where the signatories agree it is appropriate, a Memorandum of Agreement shall include a provision for monitoring and reporting on its implementation.

(5) *Duration.* A Memorandum of Agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) *Discoveries.* Where the signatories agree it is appropriate, a Memorandum of Agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) *Amendments.* The signatories to a Memorandum of Agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the Agency Official shall file it with the Council.

(8) *Termination.* If any signatory determines that the terms of a Memorandum of Agreement cannot be carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The Agency Official shall either execute a Memorandum of Agreement with signatories under § 800.6(c)(1) or request the comments of the Council under § 800.7(a).

(9) *Copies.* The Agency Official shall provide each consulting party with a copy of any Memorandum of Agreement executed pursuant to this subpart.

§ 800.7 Failure to resolve adverse effects.

(a) *Termination of consultation.* After consulting to resolve adverse effects pursuant to § 800.6(b)(2), the Agency Official the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the Agency Official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to § 800.7(c) and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the Agency Official and the Council may execute a Memorandum of Agreement without the SHPO's involvement.

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to § 800.7(c).

(4) If the Council terminates consultation, the Council shall notify the Agency Official, the agency's Federal Preservation Officer and all consulting parties of the termination and comment under § 800.7(c). The Council may consult with the agency's Federal Preservation Officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) *Comments without termination.* The Council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a Memorandum of Agreement will be executed. The Council shall provide them to the Agency Official when it executes the Memorandum of Agreement.

(c) *Comments by the Council*—(1) *Preparation.* The Council shall provide an opportunity for the Agency Official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the Agency Official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) *Timing.* The Council shall transmit its comments within 45 days of receipt of a request under §§ 800.7(a) (1) or (3) or § 800.8(c)(3), or termination by the Council under § 800.6(b)(1)(v) or § 800.7(a)(4), unless otherwise agreed to by the Agency Official.

(3) *Transmittal.* The Council shall provide its comments to the head of the agency requesting comment with copies to the Agency Official, the agency's Federal Preservation Officer, all consulting parties, and others as appropriate.

(4) *Response to Council comment.* The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(1) of the Act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

§ 800.8 Cooordination with the National Environmental Policy Act.

(a) *General principles*—(1) *Early coordination.* Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their Section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a "major Federal action significantly affecting the quality of the human environment," and therefore requires preparation of an Environmental Impact Statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

(2) *Consulting party rules.* SHPO/THPOs, Indian tribes and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) *Inclusion of historic preservation issues.* Agency Officials should ensure that preparation of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and an EIS

and Record of Decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) *Actions categorically excluded under NEPA.* If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the Agency Official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to § 800.3(a). If so, the Agency Official shall proceed with Section 106 review in accordance with the procedures in this subpart.

(c) *Use of the NEPA process for section 106 purposes.* An Agency Official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in §§ 800.3 through 800.6 if the Agency Official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) *Standards for developing environmental documents to comply with section 106.* During preparation of the EA or Draft EIS (DEIS) the Agency Official shall:

(i) Identify consulting parties either pursuant to § 800.3(f) or through NEPA scoping process with results consistent with § 800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§ 800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the Agency Official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and

(v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

(2) *Review of environmental documents.* (i) The Agency Official shall submit the EA, DEIS or EIS to the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the Agency Official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the Agency Official that preparation of the EA, DEIS or EIS has not met the standards set forth in § 800.8(c)(1) or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS or EIS is inadequate. If the Agency Official receives such an objection, the Agency Official shall refer the matter to the Council.

(3) *Resolution of objections.* Within 30 days of the Agency Official's referral of an objection under § 800.8(c)(2)(ii), the Council shall notify the Agency Official either that it agrees with the objection, in which case the Agency Official shall enter into consultation in accordance with § 800.6(b)(2) or seek Council comments in accordance with § 800.7(a), or that it disagrees with the objection, in which case the Agency Official shall continue its compliance with this section. Failure of the Council to respond within the 30 day period shall be considered disagreement with the objection.

(4) *Approval of the undertaking.* If the Agency Official has found during the preparation of the EA, DEIS or EIS that the effects of the undertaking on historic properties are adverse, the

Agency Official shall specify in the FONSI or the ROD the proposed measures to avoid, minimize or mitigate such effects and ensure that the approval of the undertaking is conditioned accordingly. The Agency Official's responsibilities under Section 106 and the procedures in this subpart shall then be satisfied when either the proposed measures have been adopted through a binding commitment on the agency, the applicant or other entities, as appropriate, or the Council has commented and received the response to such comments under § 800.7. Where the NEPA process results in a FONSI, the Agency Official must adopt such a binding commitment through a Memorandum of Agreement drafted in compliance with § 800.6(c). Where the NEPA process results in an EIS, the binding commitment does not have to be in the form of a Memorandum of Agreement drafted in compliance with § 800.6(c).

(5) *Modification of the undertaking.* If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the Agency Official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to § 800.8(c)(4)) are carried out, the Agency official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in §§ 800.3 through 800.6 will be followed as necessary.

§ 800.9 Council review of Section 106 compliance.

(a) *Assessment of Agency Official compliance for individual undertakings.* The Council may provide to the Agency Official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the Agency Official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The Agency Official shall consider the views of the Council in reaching a decision on the matter in question.

(b) *Agency foreclosure of the Council's opportunity to comment.* Where an Agency Official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the Agency Official and the agency's Federal Preservation Officer and allow 30 days for the Agency Official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the Agency Official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) *Intentional adverse effects by applicants*—(1) *Agency responsibility.* Section 110(k) of the Act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the Act governs its implementation.

(2) *Consultation with the Council.* When an Agency Official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the Agency Official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained

from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the Agency Official's notification, unless otherwise agreed to by the Agency Official, the Council shall provide the Agency Official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The Agency Official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) *Compliance with Section 106.* If an Agency Official, after consulting with the Council, determines to grant the assistance, the Agency Official shall comply with §§ 800.3–800.6 to take into account the effects of the undertaking on any historic properties.

(d) *Evaluation of Section 106 operations.* The Council may evaluate the operation of the Section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the Act.

(1) *Information from participants.* Section 203 of the Act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the Section 106 process. The Agency Official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the Section 106 process.

(2) *Improving the operation of Section 106.* Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an Agency Official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the procedures in this part, the Council may participate in individual case reviews in a manner and for a period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the Act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

§ 800.10 Special requirements for protecting National Historic Landmarks.

(a) *Statutory requirement.* Section 110(f) of the Act requires that the Agency Official, to the maximum extent possible undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertaking, the Council shall use the process set forth in §§ 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) *Resolution of adverse effects.* The Agency Official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under § 800.6.

(c) *Involvement of the Secretary.* The Agency Official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the Act to assist in the consultation.

(d) *Report of outcome.* When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any Memoranda of Agreement to which it is a signatory, to the Secretary and the

head of the agency responsible for the undertaking.

§ 800.11 Documentation standards.

(a) *Adequacy of documentation.* The Agency Official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. When an Agency Official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the Agency Official and specify the information needed to meet the standard. At the request of the Agency Official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the Agency Official and the consulting parties.

(b) *Format.* The Agency Official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) *Confidentiality*—(1) *Authority to withhold information.* Section 304 of the Act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the Act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to the criteria above, the Secretary, in consultation with such Federal agency head or official, shall determine whom may have access to the information for the purpose of carrying out the Act.

(2) *Consultation with the Council.* When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) *Other authorities affecting confidentiality.* Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the Section 106 process and may authorize the Agency Official to protect the privacy of non-governmental applicants.

(d) *Finding of no historic properties affected.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to § 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) *Finding of no adverse effect or adverse effect.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on historic properties.

(5) An explanation of why the criteria of adverse effect were found applicable

or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) *Memoradum of Agreement.* When a Memorandum of Agreement is filed with the Council, the documentation shall include any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) *Requests for comment without a Memorandum of Agreement.* Documentation shall include:

(1) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the Agency Official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1).

§ 800.12 Emergency situations.

(a) *Agency procedures.* The Agency Official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government or the governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§ 800.3 through 800.6.

(b) *Alternatives to agency procedures.* In the event an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government or the governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to § 800.12(a), the Agency Official may comply with section 106 by:

(1) Following a Programmatic Agreement developed pursuant to § 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the Agency Official determines that circumstances do not permit seven days for comment, the Agency Official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) *Local governments responsible for section 106 compliance.* When a local government official serves as the Agency Official for section 106 compliance, § 800.12 (a) and (b) also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the Agency Official shall comply with §§ 800.3 through 800.6.

(d) *Applicability.* This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

§ 800.13 Post-review discoveries.

(a) *Planning for subsequent discoveries*—(1) *Using a Programmatic Agreement.* An Agency Official may develop a Programmatic Agreement pursuant to § 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) *Using agreement documents.* When the Agency Official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no Programmatic Agreement has been developed pursuant to § 800.13(a)(1), the Agency Official shall include in any finding of no adverse effect or Memorandum of Agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the Agency Official's responsibilities under section 106 and this part.

(b) *Discoveries without prior planning.* If historic properties are discovered or unanticipated effects on historic properties found after the Agency Official has completed the section 106 process without establishing a process under § 800.13(a), the Agency Official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the Agency Official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to § 800.6; or

(2) If the Agency Official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archaeological data, the Agency Official may comply with the Archaeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the Agency Official has approved the undertaking and construction has commenced, determine actions that the Agency Official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the actions proposed by the Agency Official to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification and the Agency Official shall take into account their recommendations and carry out appropriate actions. The Agency Official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) *Eligibility of properties.* The Agency Official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of Section 106. The Agency Official shall specify the National Register Criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) *Discoveries on tribal lands.* If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the Agency Official has completed the section 106 process without establishing a process under § 800.13(a) and construction has commenced, the Agency Official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C—Program Alternatives

§ 800.14 Federal agency program alternatives.

(a) *Alternate procedures.* An Agency Official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the Act.

(1) *Development of procedures.* The Agency Official shall consult with the Council, the National Conference of State Historic Preservation Officers or

individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in §800.14(f), in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the FEDERAL REGISTER and take other appropriate steps to seek public input during the development of alternate procedures.

(2) *Council review.* The Agency Official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the Agency Official and the Agency Official may adopt them as final alternate procedures.

(3) *Notice.* The Agency Official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the FEDERAL REGISTER.

(4) *Legal effect.* Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the Act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) *Programmatic Agreements.* The Council and the Agency Official may negotiate a Programmatic Agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) *Use of Programmatic Agreements.* A Programmatic Agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) *Developing Programmatic Agreements for agency programs*—(i) *Consultation.* The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCHSPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the Programmatic Agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Agency Official shall also follow §800.14(f).

(ii) *Public Participation.* The Agency Official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The Agency Official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) *Effect.* The Programmatic Agreement shall take effect when executed by the Council, the Agency Official and the appropriate SHPOs/THPOs when the Programmatic Agreement concerns a specific region or the President of NCSHPO when NCSHPO has participated in the consultation. A Programmatic Agreement shall take effect on tribal lands only when the THPO, Indian tribe or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved Programmatic Agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the President of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only

terminate the application of a regional Programmatic Agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the Act and the SHPO is signatory to the Programmatic Agreement, the THPO assumes the role of a signatory, including the right to terminate a regional Programmatic Agreement on lands under the jurisdiction of the tribe.

(iv) *Notice.* The Agency Official shall notify the parties with which it has consulted that a Programmatic Agreement has been executed under this subsection, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/THPOs, and the public.

(v) *Terms not carried out or termination.* If the Council determines that the terms of a Programmatic Agreement are not being carried out, or if such an agreement is terminated, the Agency Official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) *Developing Programmatic Agreements for complex or multiple undertakings.* Consultation to develop a Programmatic Agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow § 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the Agency Official shall comply with the provisions of subpart B of this part for each individual undertaking.

(c) *Exempted categories*—(1) *Criteria for establishing.* An Agency Official may propose a program or category of agency undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as "undertakings" as defined in § 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purpose of the Act.

(2) *Public participation.* The Agency Official shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The Agency Official shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Agency Official shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the exempted program or category of undertakings has the potential to affect historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the Agency Official set forth in § 800.14(f).

(5) *Council review of proposed exemptions.* The Council shall review a request for an exemption that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of § 800.14(c)(1) have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the public. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt. The decision shall be based on the consistency of the exemption with the purposes of the Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the Act.

(6) *Legal consequences.* Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the Agency Official or the Council determines that there are circumstances under

which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) *Termination.* The Council may terminate an exemption at the request of the Agency Official or when the Council determines that the exemption no longer meets the criteria of § 800.14(c)(1). The Council shall notify the Agency Official 30 days before termination becomes effective.

(8) *Notice.* The Agency Official shall publish notice of any approved exemption in the FEDERAL REGISTER.

(d) *Standard treatments*—(1) *Establishment.* The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category or effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the FEDERAL REGISTER.

(2) *Public participation.* The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an Agency Official has proposed a standard treatment, the Council may request the Agency Official to arrange for public involvement.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the Agency Official set forth in § 800.14(f).

(5) *Termination* .The Council may terminate a standard treatment by publication of notice in the FEDERAL REGISTER 30 days before the termination takes effect.

(e) *Program comments.* An Agency Official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under §§ 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) *Agency request.* The Agency Official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the Agency Official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) *Public participation.* The Agency Official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standard in subpart A of this part. The Agency Official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the Agency Official set forth in § 800.14(f).

(5) *Council action.* Unless the Council requests additional documentation, notifies the Agency Official that it will decline to comment, or obtains the consent of the Agency Official to extend the period for providing comment, the Council shall comment to the Agency Official within 45 days of the request.

(i) If the Council comments, the Agency Official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the FEDERAL REGISTER of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the Agency Official shall continue to comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(6) *Withdrawal of comment.* If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the Agency Official shall comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(f) *Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives.* Whenever an Agency Official proposes a program alternative pursuant to § 800.14 (a)–(e), the Agency Official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) *Identifying affected Indian tribes and Native Hawaiian organizations.* If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the Agency Official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the Agency Official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them.

(2) *Results of consultation.* The Agency Official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The Agency Official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

§ 800.15 Tribal, State, and Local Program Alternatives. [Reserved]

§ 800.16 Definitions.

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470–470w–6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Approval of the expenditure of funds* means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) *Comment* means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) *Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

(g) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) *Day* or *days* means calendar days.

(i) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) *Foreclosure* means an action taken by an Agency Official that effectively precludes the Council from providing comments which the Agency Official can meaningfully consider prior to the approval of the undertaking.

(k) *Head of the agency* means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) *Memorandum of Agreement* means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) *National Register Criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s) *Native Hawaiian organization* means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians. *Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) *Programmatic Agreement* means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with § 800.14(b).

(u) *Secretary* means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) *State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

(w) *Tribal Historic Preservation Officer (THPO)* means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the Act. For the purposes of subpart B of this part, the term also includes the designated representative of an Indian tribe that has not formally assumed the SHPO's responsibilities when an undertaking occurs on or affects historic properties on the tribal lands of the Indian tribe. (See § 800.2(c)(2)).

(x) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) *Undertaking* means a project, activity, or program funded in whole or

in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a Federal agency.

APPENDIX A TO PART 800—CRITERIA FOR COUNCIL INVOLVEMENT IN REVIEWING INDIVIDUAL SECTION 106 CASES

Introduction. This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

General Policy. The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

Specific Criteria. The Council is likely to enter the section 106 process at the steps specified in the revised regulations when an undertaking:

(1) *Has substantial impacts on important historic properties.* This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) *Presents important questions of policy or interpretation.* This may include questions about how the Council's regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) *Has the potential for presenting procedural problems.* This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to Section 800.9(d)(2).

(4) *Presents issues of concern to Indian tribes or Native Hawaiian organizations.* This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

PART 801—HISTORIC PRESERVATION REQUIREMENTS OF THE URBAN DEVELOPMENT ACTION GRANT PROGRAM

Sec.

801.1 Purpose and authorities.
801.2 Definitions.
801.3 Applicant responsibilities.
801.4 Council comments.
801.5 State Historic Preservation Officer responsibilities.
801.6 Coordination with requirements under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).
801.7 Information requirements.
801.8 Public participation.
APPENDIX 1 TO PART 801—IDENTIFICATION OF PROPERTIES: GENERAL
APPENDIX 2 TO PART 801—SPECIAL PROCEDURES FOR IDENTIFICATION AND CONSIDERATION OF ARCHEOLOGICAL PROPERTIES IN AN URBAN CONTEXT

AUTHORITY: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470); Pub. L. 94-422, 90 Stat. 1320 (16 U.S.C. 470(i)); Pub. L. 96-399, 94 Stat. 1619 (42 U.S.C. 5320).

SOURCE: 46 FR 42428, Aug. 20, 1981, unless otherwise noted.

§ 801.1 Purpose and authorities.

(a) These regulations are required by section 110(c) of the Housing and Community Development Act of 1980 (HCDA) (42 U.S.C. 5320) and apply only to projects proposed to be funded by the Department of Housing and Urban Development (HUD) under the Urban Development Action Grant (UDAG) Program authorized by title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301). These regulations establish an expedited process for obtaining the comments of the Council specifically for the UDAG program and, except as specifically provided, substitute for the

Environmental Requirements
Floodplain

ENVIRONMENTAL REQUIREMENTS
FLOODPLAIN

The regulations at 24 CFR Part 50 and 24 CFR Part 58 require that HUD-funded projects not take place in a 100 year floodplain unless: (1) there are no practical alternative sites outside the floodplain and (2) flood insurance is obtained through the National Flood Insurance Program. Compliance with these requirements is often complicated in HUD's Indian programs because most reservations have not been mapped for special flood hazards by the Federal Emergency Management Agency (FEMA) nor do they participate in the National Flood Insurance Program. The list of communities, including Indian reservations, that have been mapped by FEMA can be found on the Internet at **www.fema.gov/fema.csb.htm**.

If an Indian reservation has not been mapped by FEMA, the environmental review process still requires that a determination be made regarding project activities within a floodplain. Alternative sources to assist in this determination include the U.S. Corps of Engineers, U.S. Geological Survey maps, the USDA Natural Resource Conversation Service, state departments of water resources, community flood administrators, and local flood control or levee districts. An appropriate, qualified source should be identified in the environmental review record to support the floodplain determination.

If the proposed activity is located in a floodplain and the Indian reservation has not been mapped by FEMA, then the formal insurance requirements of the Flood Disaster Protection Act do not apply. However, for safety reasons and to ensure the long term viability of HUD-assisted projects, recipients should use discretion in proceeding with project activities in areas that are informally known to be flood prone. In addition, it is advisable to explore the viability of elevating the first habitable floor of residential structures above the flood zone level. Finally, the recipient should determine the availability of private flood insurance if it is determined there are no practical alternatives to occupying and developing in the floodplain. Indian tribes can also request that FEMA map their reservations and, thus, be eligible for the National Flood Insurance Program, but there is generally an extensive delay in the mapping process.

There is an important exception to the floodplain requirements for single family (1-4 unit) properties. The Floodplain Management regulations at 24 CFR 55.12(b)(2) exempt from the eight step decision making process "minor" rehabilitation of one- to four-unit family properties. The term "minor" rehabilitation is defined at 24 CFR 55.2(b)(8) as not exceeding 50 percent of the market value of the structure before rehabilitation. Therefore, for "minor" housing rehabilitation of single family structures, the responsible entity can document the floodplain portion of the environmental review record by stating that "project activity is exempt from floodplain determinations in accordance with 24 CFR 55.12(b)(2)."

Environmental Fact Sheet: Floodplain Management

ENVIRONMENTAL FACT SHEET

Prepared by HUD Region IX Environmental Staff

May 1994

FLOODPLAIN MANAGEMENT (Executive Order 11988) and FLOOD DISASTER PROCTECTION ACT OF 1973

Executive Order 11988 is referenced in environmental regulation 24 CFR 58. It establishes Federal policy to assure that Federal programs, including those of the U.S. Department of Housing and Urban Development (HUD), avoid adverse impacts to floodplains; reduce the risk of flood loss; minimize the impact of floods on human safety, health, and welfare; and to the extent possible, restore the natural beneficial values served by floodplains. Only when it can be demonstrated that there is no practicable alternative does it allow provision of direct or indirect Federal assistance for floodplain development or other actions that would adversely affect floodplain areas.

E.O. 11988 applies to acquisition, new construction, and most rehabilitation activities (see reverse side of this fact sheet) that are undertaken with any HUD assistance within special flood hazard areas designated by Federal Emergency Management Agency's Flood Hazard Boundary Maps and Flood Insurance Rate Maps. HUD procedures for implementing the Order are contained in 24 Part 55 (4/21/94) when HUD assistance is planned for activities within the 100 year floodplain (flood zones "A" and "V"), or for "critical actions" within the 500 year floodplain (flood zone B). "Critical actions" include the placement of structures or facilities that produce or use highly volatile, flammable, explosive, toxic or water reactive materials; provide essential and irreplacable records or utility or emergency services that may become inoperative during flood and storm events; or are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events.

When any of the above project activities are to be located within a designated floodplain, it must be demonstrated that there is no practicable alternative. This is achieved by following the 8-step decision making process described in Part 55, and outlined as follows:

STEP 1- ***Determine if proposed action is in a special flood hazard area***
STEP 2- ***Early public notification (15 calendar day comment period)***
STEP 3- ***Identify and evaluate practicable alernatives.***
STEP 4- ***Identify the potential direct and indirect impacts of the proposed action***
STEP 5- ***Identify mitigation measures that would minimize the impacts of the proposed action***
STEP 6- ***Reevaluate the alternatives***
STEP 7- ***Public notification of decision of "no practicable alternative" (7 calendar day comment period prior to release of funds)***
STEP 8- ***Implement the action***

Compliance with the Flood Disaster Protection Act of 1973, as amended, is also referenced in 24 CFR 58, Section 58.6. Expenditure of Federal funds (including mortgage insurance) is prohibited in special flood hazard areas if a community is not a participant of the National Flood Insurance Program. The Act requires that flood insurance must be purchased and maintained on those structures located within special flood hazard areas that receive Federal assistance for construction, reconstruction, or rehabilitation.

APPROVABLE HUD ASSISTED ACTIONS IN A SPECIAL FLOOD HAZARD AREA: There is no practicable alternative (as supported by evidence of the 8-STEP decision record), the community is a participant of the National Flood Insurance Program, and flood insurance is obtained as a condition of approval.

Environmental Fact Sheet: Airport Clear Zones, Runway Clear Zones, and Accident Potential Zones

U.S. Department of Housing and Urban Development
Pacific/Hawaii Office
450 Golden Gate Avenue
San Francisco, California 94102-3448

May 2001

AIRPORT RUNWAY CLEAR ZONES AIRFIELD CLEAR ZONES AND ACCIDENT POTENTIAL ZONES

Airport Runway Clear Zones, Airfield Clear Zones and Accident Potential Zones are the areas extending beyond the ends of airport and airfield runways, where more than 75% of all aircraft accidents occur.

At civilian airports, this accident-prone zone is established by the Federal Aviation Administration (FAA) and is called the Runway Clear Zone (**RCZ**) or the Runway Protection Zone (**RPZ**). This trapezoidal-shape zone has a maximum width of 1,000 ft. beginning at the end of the runway, extending to a length of 2,500 ft. while fanning out to a width of 1,750 ft. Only those airports designated by FAA as "commercial civil airports" which are part of the National Plan of Integrated Airports, are subject to HUD regulation 24 CFR 51D. Maps showing the RCZ's/RPZ's are available from the airport operator.

At military airfields, the accident zones are called Clear Zones (**CZ**'s) and are established by the Department of Defense. The **CZ** begins at the end of the airfield runway and its maximum dimensions are 3,000 ft. wide by 3,000 ft. long. The CZ is immediately followed by two Accident Potential Zones (**APZ**'s). **APZ I** is 3,000 ft. wide by 5,000 ft. long. **APZ II** is 3,000 ft. wide by 7,000 ft. long. Maps showing these zones are obtainable from the military air base operator.

HUD Policy - 24 CFR 51D

It is HUD policy to prevent incompatible development around civil airports and military airfields, and not to provide HUD program assistance, subsidy or insurance within RCZ's or CZ's. There are some exemptions to this policy.

HUD assistance is permitted within the **RCZ** or **CZ** only when 1) the proposal will not be frequented or occupied by people, and 2) the airport operator provides written assurances that the airport does not intend to purchase the subject site for future expansion. HUD assistance is generally discouraged but permitted within the **APZ** if 1) the proposal is consistent with the DOD's Land Use Compatibility Guidelines For Accident Potential Zones chart (contained in Instruction 4165.57, 32CFR Part 256), 2) does not significantly increase the density or number of people at the site and 3) does not introduce explosive, flammable or toxic materials to the area.

HUD regulation 24 CFR 51D applies to new construction, major rehabilitation or modernization activities and to any HUD assistance which prolongs the physical or economic life of existing facilities. Part 51D does not apply to minor rehabilitation activities, to research and demonstration proposals which do not involve construction or reconstruction activities, or to emergency assistance activities.

In all cases involving HUD assistance, subsidy or insurance for the sale or purchase of existing properties in a RCZ or CZ, the buyer must be notified that the property is in a RCZ or CZ, of the implications of being within that zone and of the possibility that the property may, at a later date, be acquired by the airport operator. Pursuant to 24 CFR 58.6(d), a disclosure statement documenting the buyer's receipt of this information must be kept in the Environmental Review Record.

Even when preparing environmental reviews for proposals in the vicinity of airports that are not designated as "commercial civil airports" by the FAA, the airport operator must be contacted for information or advice regarding potential dangers, encroachment, building heights, etc.

H. Definitions and Abbreviations

Appendix H: Definitions and Abbreviations

Activity: An action that a Recipient puts forth as part of an assisted project, regardless of whether its cost will be borne by the HUD assistance or is an eligible expense under the HUD program.

Certifying Officer: The official who is authorized to execute the RROF and the environmental review certification and has the legal capacity to act as "Responsible Federal Official" under NEPA.

Environmental Justice: In general, actions taken to ensure the rights of low-income and minority communities to clean and healthy environments and that no person or group of people endure a disproportionate share of the negative environmental impacts of a Federal program.

Extraordinary circumstances: A situation where an EA or EIS is not normally required, but due to unusual conditions, an EA or EIS is warranted. Examples of indicators are:

- Actions that are unique or without precedent
- Actions that are similar to those that normally require an EIS
- Actions that are likely to alter existing HUD policy or HUD mandates
- Actions that have the potential for a significant impact on users of the facility

Project: An activity, or a group of related activities, designed by the Recipient to accomplish a specific objective.

Recipient: Means any of the following entities, when they are eligible Recipients:

- Indian Tribes
- Native Alaskan Villages
- Tribal Designated Housing Entities (TDHE's)

Release of funds: HUD issuance of a firm approval letter and/or HUD Form 7015.16. *See Request for Release of Funds.*

Request for Release of Funds (RROF): Refers to a Recipient's request for a firm approval letter. Executed through HUD Form 7015.15.

Responsible Entity (RE): The entity that assumes environmental responsibility under NEPA for HUD and executes the environmental review. Under ONAP programs, the tribal government is the RE.

Unit density: A change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.

CEQ	Council on Environmental Quality
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
ERR	Environmental Review Record
FONSI	Finding of No Significant Impact
HUD	Department of Housing and Urban Development
ICDBG	Indian Community Development Block Grant
IHBG	Indian Housing Block Grant
NEPA	National Environmental Policy Act of 1969
NOI/EIS	Notice of Intent to Prepare an EIS
NOI/RROF	Notice of Intent to Request Release of Funds
ROD	Record of Decision
RROF	Request for Release of Funds

I. List of Relevant Web Sites

Appendix I: List of Relevant Web Sites

This portion of the guidebook will provide environmental HUD personnel with a list of relevant web sites. Some examples are provided:

Name of Web Site	Description
http://www.hud.gov	HUD home page.
http://www.codetalk.fed.us/SWONAPEnv.html	Guidance, forms, data sources, request for documents, links to Parts 50 and 58.
http://www.hud.gov/library.html	Short-cut to HUD library. Some on-line documents as well as ordering information for notices, guidebooks, and forms.
http://www.hud.gov/local.html	Contains basic office information as well as links to home pages of all 80 local HUD offices.
http://ceq.eh.doe.gov/nepa/nepanet.htm	"One-stop shopping" for NEPA documentation, contacts, etc. Includes a list of Federal agency contacts (at the national level) for NEPA issues.
http://water.usgs.gov/public/epa/env_data.html	Provides links to web sites where environmental data can be obtained. GIS maps, digital files, etc., on land use, endangered species, wetlands, and more.
http://www.epa.gov/epahome	EPA home page.
Http://www.achp.gov	Provides information and guidance from the Advisory Council on Historic Preservation. Includes list of SHPOs.
http://www.fema.gov/library/tribal.htm	This website includes the FEMA list for Regional Tribal Liaison Officers.
http://www.cr.nps.gov/nr/	Contains the list of properties on the National Register of Historic Places.

http://www.achp.gov	Contains a complete list of SHPOs and THPOs with names, addresses, phone numbers and, where available, state historic preservation web pages.
http://www.ocrm.nos.noaa.gov/czm/czmsitelist.html).	Provides information on the state coastal zone management programs, including contact information.
http://www.epa.gov/OGWDW/swp/sumssa.html).	This site contains maps of sole source aquifers.
http://www.nps.gov/rivers/wildriverslist.html	Contains maps and descriptions of rivers designated as Wild and Scenic.
http://www.epa.gov/indian/ http://www.epa.gov/oar/tribal/airprogs/regplanorg.html	Both of these sites provide information on the Clean Air Act and tribes.
http://www.nrcs.usda.gov/NRCstate.html	This site contains contact information for the closest NRCS office.
http://www.intertribal.net/NAT/NATribes.htm	Provides a list of websites for various tribes for the convenience of those who wish to find tribal cultural and language resources.
http://www.fws.gov	Provides access to regional information and contacts for the USFWS.