



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

MEMORANDUM FOR: CPD Field Directors
Multifamily Housing Field Directors
Public Housing Field Directors
Field Environmental Officers
Program Environmental Clearance Officers

FROM: Richard H. Broun, Director, Office of Community Viability, DPV

SUBJECT: Highlights of changes to 24 CFR part 58 and related conforming changes to 24 CFR parts 50, 574, 582, 583, 970

This memorandum highlights the final rule changes published in the Federal Register on September 29, 2003 (68 FR 56115 – 56131) to environmental regulation at 24 CFR Part 58 — “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities” (hereafter Part 58). The rule will be effective October 29, 2003. The rule updates the list of 24 HUD programs and related assumption authorizations, makes conforming changes to environmental provisions in certain program regulations with a cross-reference to Part 58, and otherwise updates and clarifies HUD’s environmental policy and procedures including conforming changes to HUD’s regulations at 24 CFR part 50, which govern when HUD staff performs the environmental review. The final rule is posted on the HUD Environmental Website at:

<http://www.hud.gov/offices/cpd/energyenviron/environment/lawsandregs/regs/part58/changes.pdf>

Two major changes are found at §§ 58.22 and 58.5(i)(2):

(1) Section 58.22 clarifies that all project participants are prohibited from undertaking projects or activities pending HUD’s approval of the recipient’s request for release of funds if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. Previously there was some confusion as to whether the limitations applied to all the partners in the project. However, §58.22 clearly and unambiguously states that limitations on activities pending environmental clearance apply to recipients and any participator in the development process, including public or private nonprofit or for-profit entities, or any of their contractors; and

(2) Section 58.5(i)(2) states HUD’s policy that a project site is free of hazardous materials that could affect the health and safety of the occupants and specifies the criteria necessary in an environmental review to support HUD’s policy. These changes were made to conform to the longstanding provision at 24 CFR 50.3(i). HUD regulations do not require an ASTM Phase I analysis, although a Phase I report or equivalent analysis is a possible means for complying with §58.5(i)(2).

All changes to 24 CFR part 58, as well as conforming changes to 24 CFR part 50 are highlighted in the attachment.

Highlights of Changes to 24 CFR part 58 (68 FR 56115, September 29, 2003):

- Programs and activities subject to Part 58 has expanded. The Supplementary Section of the rule lists the names of the 26 HUD programs subject to Part 58 (see page 56125). Section 58.1(b) provides the specific statutory authority allowing these programs to use Part 58 procedures.
- A new provision at §58.1(c) clarifies that activities assisted with repayments to a revolving loan fund initially assisted with HUD funds are subject to the environmental review requirements only if the HUD funding program regulation continue to treat the activities as subject to the Federal requirements.
- Terms, abbreviations and definitions have been revised to reflect conformity with the applicable programs and activities subject to Part 58.
- A new section at § 58.4(c) clarifies that under NAHASDA and Section 184 program, Indian tribes have a choice whether or not to assume environmental responsibilities under Part 58.
- HUD environmental standards in §58.5 (i)(2) replaces a reference to the obsolete HUD Notice 79-33 on toxic chemicals and radioactive materials with updated requirements regarding contamination including a policy that project sites be free of contamination that could affect the health and safety of occupants or conflict with the intended utilization of the property. The new requirement is similar to that identified in the longstanding policy at 24 CFR 50.3(i), and reads:

§58.5 (i) HUD environmental standards.

* * *

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

(ii) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in §58.5(i)(2)(i).

(iii) 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, or may have contained, hazardous wastes.

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

- The list of recipients that are not responsible entities that may object to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives has been revised and updated at §58.11(b). Added were HOPWA recipients; excluded were Indian housing recipients.
- Major changes in §58.22 include the following:
 - (1) Subsection (a) through (c) makes clear the following: (i) limitations on activities apply not only to recipients, but also to other project participants, such as public or private non-profit or for-profit entities and their contractors; (ii) undertaking an activity that would have adverse environmental impact or limit the choice of alternatives, as well as committing non-HUD funds to such activity is prohibited before the request for release of funds and environmental certification have been approved; and (iii) in accord with NEPA regulations of the Council on Environmental Quality (40 CFR 1506.1(b)), if a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the applicant is about to take an action within the recipient's jurisdiction that is prohibited by § 58.22(a), the recipient shall promptly notify the applicant that the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. Conforming changes made to §§58.72 and 58.75 to cover other partners in the development process;
 - (2) Subsection (e) reflects a new statutory amendment that permits an organization, consortium or affiliate under the Self-Help Homeownership Opportunity Program (SHOP) to advance non-grant funds to acquire land prior to the completion of the environmental review process. This is generally considered a choice limiting action that otherwise is prohibited under §58.22(a). However, §58.22(e) makes clear that advancing non-grant funds for property acquisition is done at the risk of the purchaser regarding the outcome of the environmental review. In addition, under §58.22(a), HUD grant funds may not be committed or expended for land acquisition prior to completion of the environmental review and HUD's approval of the request for release of funds (RROF). Finally, Part 58 continues to prohibit project-related physical actions on any land so acquired with non-grant funds, such as construction, prior to completion of the environmental review and approval of the RROF;

There were no policy changes to the subsections covering options agreements and relocation. The entire Section reads:

§58.22 Limitations on activities pending clearance.

(a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance 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 have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in §58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

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

(c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by §58.22(a), then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

(d) 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.

(e) Self-Help Homeownership Opportunity Program (SHOP). In accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of a Request for Release of Funds (RROF) and certification, notwithstanding §58.22(a). Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.

(f) 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.

- The rule revises the first sentence of § 58.33(b) concerning when and how the pre-submission comment periods for the Notice of Finding of No Significant Impact (FONSI Notice) and/or the Notice of Intent to Request a Release of Funds (NOI/RROF) may be combined with the post-submission comment period for the Request for Release of Funds (RROF). Under the final rule, the combined procedure could be used if funds are needed on an emergency basis due to a locally declared emergency as well as during a Presidentially declared disaster and there is immediate need for public action to protect public safety.
- Three of the NEPA categorical exclusions in §58.35 are revised, one new exclusion is added, and conforming changes are made to §50.20:
 - (1) For rehabilitation, a new subsection is added at §58.35(a)(3)(i) that allows a categorical exclusion in the case of a building for residential use (with one to four units) when the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland.
 - (2) For individual actions at §58.35(a)(4), the rule clarifies that the exclusion for an individual action on a one-to four-family dwelling would apply when there are no more than four dwelling units on any site, whether in one or multiple buildings.
 - (3) For leasing and equity loans, §58.35(a)(5) is revised to clarify that acquisition for the same use includes leasing and equity loans;
 - (4) For supplemental assistance (including insurance or guarantee), the rule adds at § 58.35(b)(7) a new exclusion from NEPA and §58.5 environmental requirements any approval of supplemental assistance to complete a project previously approved under Part 58, if the project or activities have already been environmentally assessed by the same responsible entity, unless a reevaluation of the environmental findings is required under §58.47(a).
- The rule revises §§58.72 and 58.75 to conform to the changes in §58.22.
- For the following HUD programs, the rule replaces the reference to environmental review procedures of Part 50 with a reference to Part 58 procedures. The new reference also reflects the applicability of Part 50 procedures in those cases when HUD determines under §58.11 that HUD itself will be responsible to perform environmental responsibilities:
 - (1) Housing Opportunities for Persons With Aids (HOPWA) §574.510;
 - (2) Shelter Plus Care §582.230;
 - (3) Supportive Housing §583.230; and

(4) Demolition or Disposition of Public Housing Projects §970.4

Highlights of Changes to 24 CFR part 50:

- The rule clarifies at §50.19(b)(15) that activities to assist homebuyers to purchase existing dwelling units also applies to dwelling units under construction and is categorically excluded, not subject to the Federal laws and authorities cited in §50.4. Activities to assist homebuyers include closing costs and downpayment assistance, interest buydowns and similar activities that result in the transfer of title.
- Conforming changes to categorical exclusions at § 50.20 were made to make Part 50 consistent with similar changes made in §58.35 and explained above.

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