

Sep 29 2005

MEMORANDUM FOR: Field CPD Division Directors Environmental Officers
FROM: Pamela H. Patenaude, Community Planning and Development, D
SUBJECT: Emergency Work under HUD Environmental Regulations

This document has been signed by Pamela H. Patenaude

When dealing with localities impacted by Hurricane Katrina, please advise responsible entities (RE) of the existing streamlining provisions in HUD's environmental review provisions in 24 CFR Part 58. Specifically, please advise responsible entities that:

- The regulations allow the responsible entity (RE) to reduce the public notification period by seven days by allowing combined public notices to be published at the same time as the RE submits the Request for Release of Funds to HUD if funds are needed for activities during a Presidentially declared disaster, or if the chief elected official has proclaimed that there is an immediate need for public action to protect the public health.
- Activities 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 are exempt from all environmental review. 24 CFR 58.34(a)(10)
- In addition to the exemption above, Part 58 lists eleven activities that are exempt from environmental review and numerous activities that require a limited environmental review. Activities that are exempt or categorically excluded and not subject to related federal environmental laws do not require a Request for Release of Funds or public notice and may be undertaken immediately.
- In cases where the responsible entity (RE) has determined that its activities are a significant impact to the human environment, then the RE should initiate immediate consultation with Council on Environmental Quality (CEQ) staff and, if necessary, with the staff of the Advisory Council on Historic Preservation (ACHP).

More specific guidance, including a list of activities that do not require an environmental review, as well as guidance from CEQ and ACHP are included in the attachment.

Attachment

Guidance for Streamlining HUD's Environmental Reviews

1. Determine the level of review required for activities and closely examine the regulation's provisions for activities that do not require an environmental review.

Regulations allow for certain activities to be exempt from an environmental review under the National Environmental Policy Act (NEPA) and the related federal environmental laws in §58.5. These activities do not require a Release of Funds or public notification. However, these activities do require compliance with the requirements in §58.6, including the Flood Disaster Protection Act of 1973.

Such activities include:

- Environmental studies
- Public services
- Tenant-based rental assistance
- Supportive services
- Engineering and design costs
- 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 are exempt from all environmental review.

A complete list of activities that do not require a Request for Release of Funds or public notification can be found at 24 CFR 58.34 and 58.35(b).

[When HUD performs the environmental review under 24 CFR 50, the list of activities that do not require a NEPA environmental review can be found at 24 CFR 50.19.]

2. In cases of an emergency, when a Request for Release of Funds (RROF) and notification is required, HUD encourages combining the legally required public review periods and submitting the RROF simultaneously. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a 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 ensure that these comments will receive full consideration. See 24 CFR 58.33.

Communities assisting in the recovery effort by accepting evacuees or other measures, may take advantage of the emergency provision of §58.33 if the chief elected official of

the RE has proclaimed that there is an immediate need for public action to protect the public safety.

3. To address emergency actions in regard to historic properties/Section 106 requirements, HUD Field Staff should exercise one of two options as allowed in 36 CFR 800.12. See: <http://www.achp.gov/regs-rev04.pdf>.

First, REO/FEOs should check with HUD Program Directors (Part 50) and REs (Part 58) to see if they have existing Programmatic Agreements (PA) that contain adequate mitigation for emergency undertakings. Those that do should comply with the stipulations therein.

If HUD Programs and/or REs do not have PAs with adequate or no mitigation for emergencies, then REO/FEOs should advise them to follow the steps designated in 36 CFR 800.12(b)(2).

800.12 Emergency situations.

(b) Alternatives to agency procedures

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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.

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(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.

It is expected that ACHP will extend the 30-day period for emergency undertakings, as is noted in 800.12(d). ACHP did this before for the September 11 recovery effort (<http://www.achp.gov/emergencyprovisions.html>).

For the long term, OEE will continue to encourage developing PAs with emergency stipulations and also pursue developing emergency procedures per 800.12(a).

4. The Council on Environmental Quality (CEQ), which implements the National Environmental Policy Act (NEPA), has issued guidance that immediate actions that are necessary to secure lives and safety of citizens should not be delayed by NEPA review. However, such actions will require consultation with CEQ as soon as it is feasible. The guidance for NEPA compliance for emergency actions is available at <http://ceq.eh.doe.gov/nepa/regs/guidance.html>.