

REGISTRATION PROCEDURES

Thursday
August 2, 1979

Part III

Department of Housing and Urban Development

Community Development Block Grant
Program; Environmental Review
Procedures; Interim Rule

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

Office of the Secretary

24 CFR Part 58

[Docket No. R-79-680]

**Environmental Review Procedures
Community Development Block Grant
Program**

AGENCY: Department of Housing and Urban Development.

ACTION: Interim rule.

SUMMARY: These amended regulations implement Section 104(h), Title I, of the Housing and Community Development Act of 1974 (Pub. L. 93-383, 42 U.S.C. 5301) as amended. The purpose of Part 58 is to set forth the regulations governing environmental review procedures to be undertaken by applicants for funds under the Community Development Block Grant Program. These regulations have been amended to reflect and supplement the NEPA Regulations of the Council on Environmental Quality ("CEQ"), 40 CFR Parts 1500 through 1508. The NEPA Regulations which were published in the *Federal Register* on November 29, 1978 (43 FR 55978-56007) authorize and direct that all Federal agencies shall adopt agency implementing procedures and carry out, to the fullest extent possible, the procedural provisions of Section 102(2) of the National Environmental Policy Act of 1969 (Pub. L. 91-190). The NEPA regulations also provide, under § 1506.12 that an additional four (4) months shall be allowed for the State or local agencies which administer the HUD programs under Section 104(h) of Title I, in order to adopt their implementing procedures.

EFFECTIVE DATE: October 1, 1979.

COMMENT DUE DATE: September 30, 1979.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Richard H. Broun, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410; telephone: 202/755-6300. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: These Part 58 Regulations are promulgated as an interim rule effective October 1, 1979. The intent of the Interim Rule is to

enable the Department to meet its responsibility for implementing NEPA by the timely issuance of its implementing regulations which will allow their adoption and incorporation as soon as practicable thereafter by Title I applicants into the ongoing entitlement grant application process of the CDBG Program for Fiscal Year 1979. Accordingly the Secretary has determined that it is impracticable to follow a notice of proposed rulemaking procedure and that good cause exist for making these rules effective as soon as practicable.

Title I Applicant Compliance: November 30, 1979.

State and local agencies which administer HUD programs subject to this Part 58 Interim Regulations under Section 104(h) of Title I are advised that their implementing procedures should be adopted not later than November 30, 1979.

Public Comments Invited

Interested Persons are invited to participate in the making of the Final Rule by providing written comments. All comments received by September 30, 1979 will be considered in the preparation of the final rule. Such comments should be filed with the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Copies of comments received will be available for inspection and copying at that address.

The Department has determined that an environmental impact statement is not required with this rule. A copy of the Finding of Inapplicability is available for inspection in the Office of the Rules Docket Clerk at the address provided above.

Part 58 is revised as follows:

**PART 58—ENVIRONMENTAL REVIEW
PROCEDURES FOR THE COMMUNITY
DEVELOPMENT BLOCK GRANT
PROGRAM**

**Subpart A—General Policy and
Responsibilities**

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Sec.

- 58.10 [Reserved]
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- 58.21 Exempt activities and categorical exclusions.
- 58.22 Other environmental procedures.
- 58.23 Floodplains and wetlands.
- 58.24 Historic preservation.
- 58.25 Projects requiring an EIS.
- 58.26 [Reserved]
- 58.27 Interaction of applicant with Federal agencies and other non-Federal entities—Lead agency and cooperating agency role.
- 58.28 [Reserved]
- 58.29 [Reserved]

**Subpart C—Releases of Funds for
Particular Projects.**

- 58.30 Release of funds upon certification.
- 58.31 Objections to release of funds.
- 58.32 Effect of approval of certification.

Subpart D—[Reserved]

- 58.33-58.36 [Reserved]

**Subpart E—Environmental Effects Abroad
of Particular Projects**

- 58.37-58.38 [Reserved]

Authority. Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

**Subpart A—General Policy and
Responsibilities**

§ 58.1 Purpose and authority.

(a) *Authority*—(1) *Basic law.* The National Environmental Policy Act of 1969 (Pub. L. 91-190, 42 U.S.C. 4321 et seq.; hereinafter "NEPA") establishes national policy, goals, and procedures for protecting, restoring and enhancing environmental quality. NEPA, as implemented by Executive Order 11514 of March 5, 1970 as amended by Executive Order 11991 of May 24, 1977 and the implementing NEPA Regulations of the Council on Environmental Quality, 40 CFR Parts 1500 through 1508 of July 30, 1979 (43 FR 55978-56007, November 29, 1978) (hereinafter "CEQ", as to the Council, and "NEPA Regulations") authorizes and directs that all Federal agencies shall carry out, to the fullest extent possible, the procedural provisions of Section 102(2)

of NEPA including, in Section 102(2)(C), the requirement that all agencies of the Federal Government prepare detailed environmental impact statements on proposals for major Federal actions significantly affecting the quality of the human environment.

(2) *Section 104(h) of title I of the Housing and Community Development Act of 1974* (Pub. L. 93-383, 42 U.S.C. 5301 et seq.); hereinafter "section 104(h)" and "Title I" respectively) authorizes a procedure under which applicants with approved applications for assistance under Title I assume for specific projects the environmental review and decisionmaking responsibilities that would apply to the HUD Secretary were he to undertake such projects as Federal projects. The procedure eliminates the necessity for Federal environmental impact statements at the time of the initial application. At the same time, however, the procedure is intended to assure that NEPA policies and protection of the environment continue undiminished. Under the procedure applicants are to certify prior to any commitment of Title I funds for particular projects (other than funds for general planning or environmental study purposes) that they have met all of their environmental responsibilities in accordance with regulations issued by HUD Secretary, after consultation with CEQ. Approval of such certification by the Secretary under section 104(h) discharges the responsibilities he may otherwise have had under NEPA with respect to the specific projects covered by the certification. The Secretary is to wait 15 days after receipt before acting upon such a certification, thus giving those who may wish to challenge a certification an opportunity to take appropriate action. That challenge can include suit against the certifying officer or applicant who for purposes of enforcing NEPA has consented to accept the jurisdiction of the Federal courts.

Such challenge may also include a request that the Secretary reject the certification. The Secretary will consider a request for rejection of the certification only if such request is grounded on certain bases, as set forth in § 58.31(b). Under section 104(h) cities, counties and other units of general local government assume only those responsibilities under Section 102(2) of NEPA that are consistent with their statutory authority and legal capacity and which would apply if the HUD Secretary were to undertake the projects proposed for assistance as Federal projects. Thus, these regulations neither expand nor contract the categories of

actions that would be subject to environmental identification and review procedures.

(3) *Other applicable authority.* The environmental review process must also take into account, where applicable, the criteria, standards, policies and regulations under the subsections below. The process should also consider the relationship of a project funded under Title I and the requirements of these authorities, to anticipated requests for other Federal assistance, particularly housing, to which these authorities may apply. An explanation of how these authorities are taken into account and considered shall be documented in the environmental review record prior to the applicant's submission of the certification and request for release of funds required by § 58.30.

(i) *Historic properties.* The National Historic Preservation Act of 1966 (Pub. L. 89-665); Preservation of Historic and Archeological Data Act of 1974 (Pub. L. 93-291) and regulations which may hereafter be issued; Executive Order 11593. Protection and Enhancement of the Cultural Environment, 1971; HUD regulations, "Protection of Historic and Cultural Properties Under HUD Programs" 24 CFR Part 59).

(ii) *Noise.* HUD regulations relative to environmental criteria and standards for "Noise Abatement and Control" (24 CFR Part 51, Subpart B).

(iii) *Floodplain.* Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and implementing regulations; Title 24, Chapter X, Subchapter B, National Flood Insurance Program; Executive Order 11988 and applicable HUD implementing flood-plain management regulations (24 CFR Part 55).

(iv) *Coastal zones and wetlands.* Coastal Zone Management Act of 1972 (Pub. L. 92-583). Executive Order 11990 and applicable State legislation or regulations.

(v) *Air quality.* Clean Air Act (Pub. L. 90-148), as amended, and applicable U.S. Environmental Protection Agency implementing regulations.

(vi) *Water quality.* Federal Water Pollution Control Act (Pub. L. 92-500), the Safe Drinking Water Act of 1974 (Pub. L. 93-523) and applicable U.S. Environmental Protection Agency implementing regulations.

(vii) *Wildlife.* Fish and Wildlife Coordination Act (Pub. L. 85-624).

(viii) *Endangered species.* The Endangered Species Act of 1973 (Pub. L. 93-205) as amended by the Endangered Species Amendment Act of 1978 (Pub. L. 95-632, 16 U.S.C. 1536 et. seq.) and applicable Department of the Interior

and Department of Commerce implementing regulations.

(ix) *Solid waste disposal.* The Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (Pub. L. 94-580) and applicable U.S. Environmental Protection Agency implementing regulations.

(x) *Environmental effects abroad.* Executive Order 12114, Environmental Effects Abroad of Major Federal Actions (44 FR 1957, January 4, 1979).

(b) *Purpose.* These regulations implement the requirements of section 104(h), supplement the NEPA Regulations (40 CFR Parts 1500-1508) and are intended to assure that the policies of NEPA are most effectively implemented in connection with the expenditure of funds under Title I, and to assure to the public undiminished protection of the environment. The policies of NEPA, in addition to other responsibilities set out in section 2 and Title I of NEPA, require the use of all practicable means, consistent 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 esthetically 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.

§ 58.2 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 of the first day following the day of the action which initiates it.

For the purpose of this section, the term "action" means:

(a) Actual publication of the applicant's notices required by §§ 58.15, 58.16, 58.17 and 58.30;

(b) Actual publication in the Federal Register of the EPA announcement of its receipt of the applicant's notices;

(c) Receipt by the EPA of the final environmental impact statement.

§ 58.3 Terminology.

(a) *Title I definitions.* For the purposes of this part, the following terminology shall apply and supplement the uniform terminology provided in 40 CFR Part 1508 of the NEPA Regulations:

(1) *Actions which may significantly affect the quality of the human environment.* Those actions for which section 102(2)(c) of NEPA would require the preparation of an environmental impact statement (EIS). Applicants assuming NEPA responsibilities pursuant to Title I and these regulations shall review each project proposed for fund release under Title I in accordance with the environmental review process described in these regulations in order to determine whether the applicant's request to HUD for the release of Title I funds would constitute an action, were the applicant a Federal agency, which may significantly affect the quality of the human environment.

(2) *Activity.* As used in this Part, "activity" means both those actions funded or authorized to be funded with Title I assistance and those related actions which are not so funded or not authorized to be so funded but which are put forth by the applicant as part of its strategy for the treatment of a project area. In the context of environmental review, it is not the source of funds for an activity, but the nature of the activity and its relationship to other activities which is relevant. Where the term "eligible activity" is used in this part, it means an activity which is eligible for Title I assistance pursuant to 24 CFR Parts 570 and 571. See also § 58.21, Exempt Activities.

(3) *Applicant.* The applicant is the State or unit of general local government which makes application pursuant to the provisions of Subparts D, E, F and G of 24 CFR Part 570; or an Indian Tribe, as defined in Section 102(a)(16) of Title I, which makes an application pursuant to the provisions of Subparts C, D and E of 24 CFR Part 571. One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of a State or a unit of general local government or of an Indian Tribe to undertake a community development program in whole or in part, but only the State or unit of general local government or an Indian Tribe may be the applicant under the subparts cited above, and under this Part 58. Upon execution of its grant agreement

with HUD, an applicant becomes a "recipient" under 24 CFR Part 570 or Part 571. As used in this Part 58, the term "applicant" includes "recipient" under Part 570 or Part 571, where the context so requires.

(4) *Certifying officer.* The term "certifying officer" means the chief executive or another officer of the applicant authorized, in accordance with applicable local law, to execute the certification and request for release of funds specified at § 58.30, to consent to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969, and to consent on behalf of the applicant to accept the jurisdiction of the Federal courts for the enforcement of NEPA responsibilities as such official.

(5) *Environmental impact.* Any alteration of existing environmental conditions, or creation of a new set of environmental conditions, adverse or beneficial, caused or induced in whole or in part, directly or indirectly, by a proposed project under Title I.

(6) *Environmental impact statement (EIS).* A written statement, prepared in accordance with NEPA and 40 CFR Part 1502 of the NEPA Regulations describing any alteration of environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the action or set of actions under consideration, and the alternatives to such action or group of actions. The statement should include a quantitative measure of magnitude and a qualitative measure of importance of the environmental impacts.

(7) *Environmental review and environmental review process.* The entire process for compliance by the applicant with NEPA under this Part with respect to a project funded under Title I.

(8) *Level of clearance finding.* The applicant's determination pursuant to § 58.15(d) as to which of the two levels of environmental clearance applies.

(9) *Project.* The term "project", as used in this part, means an activity or a group of integrally related activities, designed by the applicant to accomplish, in whole, or in part, a specific goal. Geographically or functionally related activities designed to accomplish a specific goal, irrespective of the funding sources of those activities, shall be grouped together for consideration as a single project. Because of the interrelationships of the activities comprising the project, the project as a whole shall be subject to a single environmental review in accordance with this part. A project may take a

number of years to complete and may require funds in addition to the amount provided in a single program year.

(10) *SMSA.* A standard metropolitan statistical area as defined by the Office of Management and Budget.

(11) *SMSA county.* Within an SMSA, a county or county equivalent as listed in the P-25 series, with population estimates and projections, published by the Bureau of the Census.

(12) *Urban renewal project.* A project as defined in section 110(c) of the Housing Act of 1949, as amended or a neighborhood development program as defined in section 131(b) of the Housing Act of 1949, as amended.

(b) *Uniform terminology of NEPA Regulations.* The following terminology is set forth in 40 CFR Part 1508 and is hereby made a part of the HUD implementing regulations under this part:

(1) *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 (HUD) * * * and for which therefore, neither an environmental assessment nor an environmental impact statement is required." (§ 1508.4)

(2) *Cooperating agency* means: "any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to an environmental impact involved in a proposal. * * * 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." (§ 1508.5)

(3) *Effects* include: (i) "Direct effects, which are caused by the action and occur at the same time and place.

(ii) "Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still foreseeable." (§ 1508.8)

(4) *Federal agency* means: "all agencies of the Federal Government. 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." (§ 1508.12)

(5) *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".) 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." (§ 1508.14)

(6) *Jurisdiction by Law* means: "agency authority to approve, veto, or finance all or part of the proposal." (§ 1508.15)

(7) *Lead agency* means: "the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement." (§ 1508.16)

(8) *Mitigation* includes:

(i) "Avoiding the impact altogether by not taking a certain action or parts of an action.

(ii) "Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(iii) "Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(iv) "Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(v) "Compensating for the impact by replacing or providing substitute resources or environments." (§ 1508.20)

(9) *Referring agency* means: "the Federal agency which has referred any matter to the Council (CEQ) after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality." (§ 1508.24)

(10) *Scope* consists of: "the range of actions, alternatives and impacts to be considered in an environmental impact statement. * * * To determine the scope of environmental impact statements, agencies shall consider * * *:

(i) "*Connected actions*, which means that they are closely related and therefore should be discussed in the same impact statement.

(ii) "*Cumulative actions*, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.

(iii) "*Similar actions*, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.

(iv) "*Alternatives*, which include:

—"No action alternative.

—"Other reasonable courses of actions.

—"Mitigation measures (not in the proposed action).

(v) "*Impacts*, which may be:

—"Direct.

—"Indirect.

—"Cumulative." (§ 1508.25)

(11) *Special expertise* "means statutory responsibility, agency mission, or related program experience." (§ 1508.26)

§ 58.5 General policy.

(a) *Applicants to assume environmental responsibilities*. Except as provided at paragraph (b) of this section, all applicants for assistance under Title I shall be required to assume responsibility for carrying out all of the provisions of NEPA relating to particular projects for which the release of funds is sought. This shall include:

(1) *NEPA Procedures*—The development of the applicant's technical and administrative capability to comply with the NEPA Regulations and the procedures of this part in accordance with the intent and applicable requirements of 40 CFR 1507.2 and 1507.3.

(2) *Additional Procedures*—Assuming all applicable responsibilities in accordance with §§ 58.22 through 58.24 and the requirements of 40 CFR 1502.25 for compliance with the National Historic Preservation Act of 1966, as amended; the Preservation of Historic and Archeological Data Act of 1974, as amended; Executive Order 11593, May 13, 1971, Protection and Enhancement of the Cultural Environment; the HUD regulations on "Protection of Historic and Cultural Properties Under HUD Programs" (24 CFR Part 59); Executive Order 11988, May 24, 1977, relating to floodplain management and HUD implementing regulations (24 CFR Part 55); Executive Order 11990, May 24, 1977, relating to Protection of Wetlands; Section 1424(e) of the Safe Drinking Water Act of 1974; the Endangered Species Act of 1973; and other regulations and orders issued relative to any of the foregoing.

(3) *Applicant's decision points*. The decisionmaking responsibilities in the conduct of the environmental review process in accordance with the applicable requirements and intent of 40 CFR 1505.1. Pursuant to §§ 58.14 through 58.17, an applicant's decision points will include normally the following:

(i) Decisions relative to environmental review and planning actions prescribed in § 58.14 and as authorized under 24 CFR 570.205 in conjunction with an

applicant's basic-planning efforts undertaken pursuant to 24 CFR 570.301 and 570.305 (See paragraph (d), hereunder).

(ii) Determination of legal capacity (paragraph (b) hereunder);

(iii) Decisions not to proceed and to reprogram (paragraph (c)(3) hereunder);

(iv) Determination of projects that are exempt from environmental review requirements (§ 58.21) or categorically excluded from such review under this part.

(v) Decisions on the use of prior environmental reviews or prior EIS's can be used (§ 58.19);

(vi) Decisions on actions pursuant to the environmental assessment process findings on project impacts on the human environment (§ 58.15(d)(1) or §§ 58.15(d)(2), 58.16 pursuant to 40 CFR 1501.3 and/or other effects on related environmental issues cited in paragraph (a)(2) of this section (58.22 through 58.24) and pursuant to 40 CFR 1502.25(a).

(vii) Decision related to the conduct of draft, final and supplemental EIS's (58.17) as required by 40 CFR 1501.4 including the scoping determinations required under 40 CFR 1501.7; the issuance and transmittal of the draft and final EIS's (§ 58.17 (e) and (f) and the disposition of public and Federal agency comments thereon (§ 58.17(e)).

(viii) Execution of the certification and request for release of funds (§ 58.30).

The carrying out of all environmental review and decision-making responsibilities shall be documented in the environmental review record specified in § 58.11 of this part, including a summary record of decisions for projects requiring an EIS in accordance with 40 CFR 1505.2 (§ 58.11 (p)).

The certification described at § 58.30 must be submitted to HUD by the applicant prior to the release of funds for any such project as evidence of the assumption of the responsibilities set forth above.

(4) *Certifying officer responsibilities*. In addition to the environmental review and decision-making responsibility in paragraphs (a) (2) and (3), of this section the applicant's certifying officer, in his capacity as the "responsible Federal official" as that term is used in NEPA, shall:

(i) Assume responsibility for the preparation of an environmental impact statement on behalf of Federal agencies in the cases where the applicant is designated as the lead agency based on the procedures and criteria set forth in 40 CFR 1501.5 and as provided in § 58.27(b).

(ii) Carry out the functions and responsibilities assigned to the

applicant designated as a cooperating agency in accordance with the provisions of 40 CFR 1501.6 as supplemented in § 58.27(c).

(iii) Represent the applicant and be subject to the jurisdiction of the Federal courts pursuant to section 104(h); such certifying officer of the applicant shall not be represented by the Department of Justice in court, but reasonable defense costs, including the fees of attorneys and experts incurred in environmental litigation may be funded from the applicant's grant amounts. In such cases the certifying officer shall ensure as called for by 40 CFR 1505.1(c) that "relevant environmental documents, comments and responses be part of the record" on the adjudicatory proceedings on behalf of the applicant.

(iv) Ensure applicant compliance in the reviewing and commenting functions prescribed in the environmental review process of this part (§§ 58.15 through 58.17); on the applicant's functions as a lead agency or as a cooperating agency prescribed in paragraph (a)(4) (i) and (ii) of this section; and as an interested agency with special expertise in the case of a Federal project for which a draft EIS is prepared and which may have an impact on the applicant's community development program.

(v) Perform all the coordinating responsibilities as required under this part or generally prescribed in the NEPA Regulations.

(b) *Legal capacity.* (1) *Each applicant shall, prior to submitting an application, review its legal capacity to assume and carry out the environmental responsibilities hereunder. If an applicant believes it may lack legal capacity to assume and carry out environmental review responsibilities hereunder, then it shall submit to the HUD official authorized to receive the application the legal opinion of its attorney in support of such claim and shall consult with said HUD official in order to obtain appropriate instructions. Such claim shall be made prior to submitting an entitlement or discretionary application. Discretionary applicants shall submit such claim to HUD with the preapplication, if a preapplication is required. HUD will review such claim and approve or disapprove it.*

(2) If an applicant's claim of lack of legal capacity has been approved by HUD, then HUD will complete an environmental assessment, including an EIS if appropriate, pursuant to 24 CFR, Part 50, as amended, before the application is approved, or in those cases where a preapplication is

required, before the applicant is invited to submit a full application.

(3) Community associations, other applicants which are eligible for assistance pursuant to 24 CFR 570.403(b)(1)(iii) unless such applicant is also described in the first sentence of 24 CFR 570.3(v), and private developers approved under Title VII of the Housing and Urban Development Act of 1970 or Title IV of the HUD Act of 1968, are considered by HUD to lack the legal capacity to assume or carry out environmental review responsibilities.

(c) *Environmental review process.* The environmental review process consists of a study by the applicant of each project to identify any environmental impacts of activities proposed to be taken by the applicant which are to be supported, in whole or in part, by Title I funds. The study will be performed in accordance with the guiding principles set forth in 40 CFR 1500.4 and 1500.5 of the NEPA Regulations as supplemented by the procedures of this Part and in HUD-399-CPD, *Environmental Reviews at the Community level* to provide for the smooth flow of the environmental review process without undue delay.

In the *environmental assessment* of a proposed project and its alternatives, the applicant shall determine the nature, magnitude and extent of the *environmental effects* caused by the project and measure the *cumulative impacts* as defined in § 58.5(d)(3) that they will produce on the human environment; make appropriate recommendations for environmental safeguards, and *mitigation* measures to be conditioned for approval of a proposed project; and, based on these determination and recommendation, make appropriate decisions for implementing or not implementing the project or its alternatives and, where necessary, (4) prescribe monitoring and inspection procedures to be followed during the implementation of project and after its completion (§ 58.32(c)).

(1) *Determination of impact.* In the environmental review process, the applicant must arrive at a determination as to whether or not any proposed project will result in any environmental impact; or will itself be affected by the environment; the nature, magnitude and extent of any such impact; whether or not any changes could be made in the project as proposed, or alternatives to such project could be adopted, to eliminate or minimize adverse impacts; and the level of environmental clearance which is appropriate. Such determination is largely a matter of judgment on the part of the applicant,

involving evaluation of available facts, pursuant to the procedures and guidelines contained in this part.

(2) *Mitigation actions and safeguards.* If the applicant's environmental review process reveals environmental effects for which mitigation actions or safeguards should be implemented, the applicant shall use all appropriate means to minimize adverse impacts including mitigation actions provided in 40 CFR 1508.20 or otherwise providing for a decision not to implement a project pursuant to paragraph (c)(3), hereunder. The mitigation actions prescribed for a project shall be set forth in the environmental review record of the applicant to document the decisions and actions taken in the implementation of a project.

(3) *Decision not to implement.* If, through the environmental review process, the applicant concludes that the proposed project should not be implemented in whole or in part, then the applicant may reprogram to another eligible project in accordance with the applicable provisions of 24 CFR 570.305 or of 24 CFR 571.307 in the case of an Indian Tribe applicant.

(d) *Scope and timing of early environmental planning and environmental assessments.* The environmental review of a project is a continuing process which shall begin at the earliest point in the basic planning efforts prescribed in 24 CFR 570.301 and 570.305 or in 24 CFR 571.205 and 571.305 for Indian Tribe applicants. In compliance with Section 1501.2 of the NEPA Regulations, environmental considerations shall be raised and receive adequate attention by the applicant early in its planning and decisionmaking process for: The development of the comprehensive strategies of its three-year Community Development and Housing Plan; the formulation of its annual community development program, and the planning and management of areas designated for concentrated action of community development and related programs, of Neighborhood Strategy Areas (NSA's) and of multi-year projects.

Applicants shall carry out their environmental review responsibilities for projects as defined at § 58.3 in accordance with the following:

(1) *Early environmental assessment.* Urban environmental design and planning activities authorized by §§ 570.205 (a) and (b) or by §§ 571.205(a) and (b) and 571.206(h); and project engineering and design for eligible activities (prescribed in §§ 570.201 through 570.205 or in §§ 571.201 through 571.205) shall be carried out in sufficient

detail and to the extent practicable pursuant to §§ 570.200(i), 570.301(e) or § 571.205 as appropriate. Such activities shall serve to assist the applicant's compliance with the purposes, intents and requirements of Part 1501 of the NEPA Regulations as supplemented by §§ 58.14 and 58.15.

(2) *Timing.* To the greatest extent possible, the environmental review of proposed projects shall be carried out concurrently with the formulation of the applicant's community development program and the preparation of the application for Title I funds. Environmental review shall commence at the earliest possible point in the development of a project. When a project is formulated, it shall be reviewed for environmental considerations in order to identify and evaluate expected or potential environmental impacts, to devise changes and modifications to eliminate or mitigate adverse impacts, and to explore alternatives. By developing and carrying out its environmental review as part of the overall program and application formulation process, the applicant can considerably shorten the time between program development and program implementation.

(3) *Cumulative impact and aggregation.* The cumulative effects of related activities must be considered together. Activities which are individually small may, in the aggregate, have cumulatively large effects on the environment, especially when a number of such activities will take place at or about the same general time and in the same general location. Also, a series of activities taking place over extended periods of time can, in the aggregate have a cumulative effect upon the environment much greater than the effect of each individual activity considered separately. All individual activities which are related either geographically or functionally, or are logical parts of a composite of contemplated actions, shall be grouped and shall be deemed by the applicant to be a project and must be evaluated as a whole in a single, comprehensive environmental review. The environmental review of a multi-year project shall encompass the entire multi-year scope of activities and shall not be limited to those activities scheduled for any given year. This subsection applies to all projects and activities, except that for exempt activities defined at § 58.21(a) the applicant may, but is not required to, apply these aggregation requirements.

(4) *Illustrations.* Where an applicant proposes to acquire a parcel of land,

relocate its occupants, clear the site by demolition, then develop the site, or dispose of it for development by others, then all of these activities must be viewed as comprising a single project, for purposes of environmental review. Where an applicant proposes to undertake a number of small activities, such as street, water, and sewer improvements in a given neighborhood, the applicant shall aggregate all such geographically or functionally related activities and view them as a single project for environmental review purposes and shall evaluate their cumulative environmental impact. This applies even if the activities are to occur over a period of years and even if some of the activities are to be funded by other than Title I funds or carried out by someone other than the applicant.

§ 58.6 [Reserved]

Subpart B—Environmental Reviews by Applicants Under Title I

§ 58.7 [Reserved]

§ 58.8 [Reserved]

§ 58.9 Financial assistance for environmental review.

Applicants may utilize Federal financial assistance to enable them to carry out environmental review pursuant to this part, in accordance with the provisions of 24 CFR 570.205, 570.206(h), 570.301 and 571.205 and 571.206(h). The costs of environmental reviews include any costs incurred in complying with any of the authorities mentioned at § 58.1(a)(3).

§ 58/10 [Reserved]

§ 58.11 Environmental review record.

Applicants shall prepare and maintain a written record of the environmental review pertaining to each project, which shall be designated the "Environmental Review Record", and shall be available for review as part of the project proposal at the request of interested agencies, groups or individuals. The environmental review record, using the appropriate formats contained in HUD 399-CPD, Environmental Reviews at the Community Level, or other equivalent formats used by the applicant, shall include as applicable:

(a) A description of the project to which it relates and the documentation of environmental planning and assessment actions taken pursuant to 40 CFR Part 1501 and as set forth in § 58.14;

(b) Documentation showing that each step in the environmental review process set forth in § 58.15 has been performed, that the level of clearance finding required by 58.15(d) has been

made, and is supported in the environmental review record;

(c) Documentation showing that each step in the environmental review process under § 58.16 or § 58.17, as the case may be, has been performed and that the requirements of applicable subsections have been satisfied;

(d) A description of the existing environmental conditions, the environmental impacts identified and modifications and changes made to compensate for environmental impacts;

(e) A copy of any Draft EIS, and the comment on it; the Final EIS together with comments and documentation on subsequent actions, if any, taken pursuant to § 58.31 (See (i) below); and a copy of any supplemental EIS which may have had to be prepared to supplement either a Draft or Final EIS pursuant to 40 CFR 1502.9(c) and as provided in §§ 58.17(h) and 58.19(a);

(f) Copies of historic preservation review analyses conducted under 24 CFR Part 59 showing satisfaction with each applicable step of such process and support for any conclusion reached in connection therewith;

(g) The written decision required by § 58.19(c) with respect to projects to which § 58.19(c) is applicable;

(h) A copy of the notice required by § 58.30(a), the request required by § 58.30(b), and the certification and accompanying statement required by § 58.30(c);

(i) A copy of any environmental objection received which pertains to the project;

(j) A copy of any request for a waiver, and any waiver that may be issued under § 58.25 (Table I note (2));

(k) Evidence of any determination of the "lead agency" or a "cooperating agency" under § 58.27;

(l) Copies of environmental analyses or reports, conducted under State or local law;

(m) Original counterparts or copies, as appropriate, of other documents appropriate in the judgment of the applicant for inclusion in the environmental review record (see (s) and (t) hereunder);

(n) Documentation relative to compliance with Executive Order 11988 on Floodplain Management and Executive Order 11990 on Protection of Wetlands, including the notices required by § 58.23; and

(o) Documentation required to reflect compliance with related statutory authorities and legislation cited in § 58.5(a).

(p) A "Summary record of decisions" which shall be prepared and maintained by the applicant as required in § 58.17

for a project requiring an EIS. Such a summary record may be prepared at the applicant's option to accompany the procedure set forth in § 58.16 for completing the environmental review process of a project which resulted in a finding of no significant impact;

(q) Documentation of applicant monitoring and enforcement procedures and related post-review actions (§§ 58.17 and, 58.32);

(r) Copy of public hearing announcements and summary record of the objections, comments and of the response and decision of the applicant;

(s) Copies of relevant environmental assessments conducted by State and local agencies and the applicable information used;

(t) Copies of prior environmental reviews including areawide EIS and other Federal agency's EIS used in relation to a proposed Title I project;

(u) Alternatives considered in applicant decisions including comparison of the alternatives, environmental factors and non-environmental factors considered.

§ 58.12 [Reserved]

§ 58.13 [Reserved]

§ 58.14 [Reserved]

§ 58.14 Environmental Review Process—Early Planning/Assessment Procedures.

The purpose of this process is to provide applicants the means to implement the environmental planning and management policies set forth in § 58.5. The procedure set forth hereunder is designed to assist the applicant in establishing an administrative and environmental planning capability to carry out the environmental review and decisionmaking process as *tiered* (definition § 58.3(b)) for decision at each level of the environmental review process prescribed in §§ 58.14 through 58.17, pursuant to the tiering provisions of 40 CFR 1502.20 and 1508.28. This environmental review of a project is a continuing process which should begin at the earliest point in the basic planning efforts prescribed in 24 CFR 570.301 and 570.305 in order to ensure that environmental considerations shall be raised and receive adequate attention in the development of the administrative requirements and the planning and programming strategies of the applicant community development program. At this initial level, the environmental review process consists of the following actions:

(a) *Administrative Procedure.* The following administrative actions shall be initiated early in the applicant development of its CDBG Program:

(1) Designate the certifying officer who shall assume on behalf of the applicant all environmental review and decisionmaking responsibilities as provided in §§ 58.3(a) and 58.5.

(2) Provide all practicable public participation and decision review mechanisms for consultation, advice and guidance, pursuant to the requirements of 40 CFR 1506.6, through such means as the designation of specific staff source of information and status reports on environmental impact statements and other elements of the environmental review process. Such a control source of information would be responsible for:

(i) *Publication and dissemination* of the public notices required under this part;

(ii) Integration of applicable private development actions, including identification of the type of actions initiated by private parties and non-Federal entities for which applicant involvement may be reasonably anticipated such as the coordination provisions of 24 CFR 570.301(c) for Neighborhood Strategy Areas under Title I and economic development activities under 24 CFR 570.203 and 570.204. In such cases the applicant shall notify the private individual or organization of studies and information that it may reasonably expect to require under 40 CFR 1501.2(d) for the integration of these private actions in the applicant's CDBG strategies (such as those designed for economic development and neighborhood revitalization. The applicant shall obtain on such private actions all practicable environmental information which will be necessary for aggregation purposes and cumulative impact assessment as provided in § 58.5 and for threshold determinations under § 58.25.

(iii) Provide information and other resources to residents and citizen organizations participating in the planning, implementation or assessment of proposed Title I activities as provided in 24 CFR 570.206(b).

(3) Establish an urban environmental design administrative capacity authorized by 24 CFR 570.205(b)(3) as a part of the applicant's efforts to develop its policy-planning-management capacities so that it shall be able to comply with the NEPA mandate of Section 102(2)(a) "to utilize a systematic interdisciplinary approach" as required in 40 CFR 1501.2(a) and 1507.2(a).

(4) Determine staff and resource needs for the environmental planning and urban environmental design activities authorized by 24 CFR 570.205 including paragraph (a)(3) of this section that can

be supported through the block grant funds provided for planning and administrative costs by 24 CFR 570.200(i) and the consultant costs of 570.200(g).

(5) Initiate, as necessary, the scoping process prescribed in 40 CFR 1501.7 for a *preliminary* determination of the scope of environmental issues to be addressed and a preliminary identification of the significant issues including conflicting objectives that shall serve to assess and compare environmental effects and compare alternatives in the planning, programming decisions and project selection including the decisions for areawide environmental assessments in the basic CDBG planning efforts specified above, and to carry out Steps (6) and (7) hereunder.

(6) Review in consultation with the appropriate Federal agencies and authorities cited in § 58.1(a)(3) the requirements for the related environmental concerns identified in scoping process of paragraph (a)(5) of this section.

(7) Based on the scoping process preliminary findings, determine potential lead and cooperating agencies based on the criteria of 40 CFR 1501.5 and 1501.6.

(b) *Environmental Planning Tier.* This planning tier shall consist of the following steps of decisionmaking.

(1) Establish environmental goals, objectives and the relative priority of available options to be selected by the applicant.

(2) Determine the policies, alternative implementing programs and actions including, where appropriate and practicable, results of prior environmental reviews (§ 58.19) and post review monitoring and audit functions.

(3) Ensure that the results of this feedback process will serve to develop alternative policies or objectives and where necessary, the corrective and reprogramming actions which can result from a decision not to implement (§ 58.5(b)(3).)

(4) Determine the advantages (benefit-cost, long-term and short-term) and feasibility of areawide environmental reviews, aggregation and cumulative impact assessments as opposed to individual project assessments.

(5) Initiate the scoping process in joint planning and coordination programs and for reviews to be undertaken by the applicant in a lead agency or cooperating agency capacity including the decisions related thereto.

(6) Develop the recommendations to be considered concurrently with other

technical, economic and CDBG program considerations in the decisions of the applicant on the community development and housing actions that it will undertake with Title I funds.

(7) Ensure that recommendations and decisions on project selection and development take into account the extent to which the project creates a significant urban impact on central cities and older urban areas; including the relative impact that the project may have on a particular area as compared to other areas of a city or community relative to such factors as:

(i) Economic revitalization objectives, particularly those related to economically disadvantaged areas of a community, and efforts related to the prevention of additional areas from becoming distressed;

(ii) Business location and level of economic activity;

(iii) Expansion of jobs for minorities and the unemployed;

(iv) Expansion of housing choices for the disadvantaged and minorities;

(v) Efforts to strengthen the fiscal condition and tax base of the applicant;

(vi) Conservation and revitalization of neighborhoods, particularly blighted neighborhoods; and

(vii) Improvement of urban physical, cultural and esthetic environments through protection of parks, recreation, historic and cultural resources and through the development of mass transit opportunities.

§ 58.15 Environmental Review Process—Steps to Commence Environmental Assessment.

The manner in which the applicant carries out the environmental review process, including the concurrent historic preservation review, and other reviews required by the authorities set forth in § 58.1(a) and the responsibilities assumed pursuant to § 58.5(a), is largely within the discretion of the applicant. However, the process should start as early in the planning and program development process as possible, should be completed while alternatives can still reasonably be considered and action taken to enhance environmental quality. Unless an immediate decision is made that an EIS is required, the process will be reported in the HUD Format I or equivalent, and shall include the following steps:

(a) *Determine existing conditions.* Existing environmental conditions and trends which are likely to continue in the absence of the proposed project should be identified. Such information is an essential data base from which to

assess and evaluate any effects of the project.

(b) *Identify environmental impacts.* The nature, magnitude, and extent of all environmental impacts of the project, whether beneficial or adverse, should be identified.

(c) *Examine identified impacts.* As to all environmental impacts of the proposed project which are identified:

(1) *Possible project modification.* Examine the project and consider ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize any adverse environmental impacts and enhance environmental quality. The examination should include consideration in light of the policies set forth in § 58.1(b) of both positive and negative effects of any such modification in relation to design, use, location, cost, and timing of the proposed project and its implementation.

(2) *Alternatives.* Examine alternatives to the project itself which would eliminate or minimize environmental impacts or enhance environmental quality. The examination should include consideration of both positive and negative effects of any such alternatives in relation to design, use, location, cost, and timing, and consideration of the effect of no project.

(d) *Level of clearance findings.* Having completed each of the foregoing steps that may be applicable in the environmental review process, the applicant shall make one of the two level of clearance findings set forth below.

(1) *Finding that request for release of funds for project is not an action which may significantly affect the quality of human environment.* If the environmental review process of the applicant results in a finding by the applicant that the request for release of funds for the proposed project is not an action which may significantly affect the quality of the human environment, then a document stating this finding and the facts and reasons supporting the finding shall be prepared by the applicant and included in the environmental review record. The document shall set forth sufficient information to demonstrate that the applicant has complied with each step in the environmental review process.

(2) *Finding that request for release of funds for project is an action which may significantly affect the quality of the human environment.* If an EIS is required by § 58.25, or if the environmental review process of the applicant results in a finding by the

applicant that the request for release of funds for the proposed project is an action which may significantly affect the quality of the human environment, then a document stating this finding shall be prepared by the applicant and included in the environmental review record. An EIS is required for each action which may have such significant effect.

§ 58.16 Environmental Review Process—Steps to Complete Environmental Assessment (No EIS Required).

The following procedure shall be followed where the level of clearance finding is that specified in § 58.15(d)(1):

(a) *Notice of finding of no significant impact.* The applicant shall prepare a notice of finding of no significant impact on the environment using format VI of HUD-399-CPD, Environmental Reviews at the Community Level, or such other equivalent format as may be used by the applicant.

(b) *Publication and dissemination.* The notice of finding of no significant impact on the environment shall be published and disseminated in the same manner as a notice of intent to file an EIS, as described as § 58.17(b) and will provide at least 15 days after initial publication for public comment. The applicant may, at the same time of publication of the above notice, also publish the notice required by § 58.30(a). In such case, both notices shall be published and disseminated in the manner specified at § 58.17(b).

(c) *Completion.* Following publication and dissemination of the notice of finding of no significant impact on the environment and the expiration of any time fixed for comments, the environmental review process shall be complete, unless further proceedings are found by the applicant to be necessary, due to responses to such notice, or otherwise.

§ 58.17 Environmental Review Process—Procedures for Draft, Final and Supplemental Environmental Impact Statements.

The following procedure shall be followed where the level of clearance finding is that specified in § 58.15(d)(2):

(a) *Notice of intent to file an EIS.* As soon as practicable, the applicant shall prepare a notice of intent to file an EIS using format V of HUD-399-CPD, Environmental Review at the Community Level, or such other equivalent format as may be used by the applicant.

(b) *Publication and dissemination.* Copies of the notice of intent to file an EIS shall be sent to the local news media, individuals and groups, including low- and moderate-income

neighborhood groups, known to be interested in the applicant's activities, local, state, and Federal agencies, including the headquarters and appropriate Regional Office of the Environmental Protection Agency, the HUD Area Office, the appropriate A-95 clearinghouses, and others believed appropriate by the applicant. Such notice shall be published at least once in a newspaper of general circulation in the affected community. If such newspaper is of a type specializing in the publication of legal, real estate, commercial, or other notices, listings, and advertisements and is not of a type subscribed to and read by the general public as a source of news of general public interest, then such notice shall also be published at least once in easily readable type in the nonlegal section of a newspaper of general circulation, and where appropriate in a minority and non-English language newspaper of general circulation where such exists. The applicant also shall make reasonable efforts to provide the notices, in the form of press releases to neighborhood newspapers or periodicals serving low- and moderate-income neighborhoods.

(c) *Procedures in the conduct of EIS's.* Prior to the preparation of a draft EIS, the applicant shall make the following determinations necessary for the conduct of the preparation of the draft and final EIS's for a project including the determination of lead agency when more than one Federal agency is involved in the same action; the designation of cooperating agencies; the establishment of the scoping process prescribed in 40 CFR Part 1501.7; and, the exercise of the public hearing options.

(1) *Lead agency designation.* When one or more Federal agency is involved in the same action, and as soon as practicable after its finding under § 58.15(d)(2) that a project will require the preparation of an EIS, the applicant shall initiate the procedure for the designation of the lead agency or joint lead agencies as prescribed in § 58.27 and in accordance with the criteria and conditions set forth in 40 CFR 1501.5 of the NEPA regulations. Such a lead agency shall assume the responsibility for the preparation of the draft and final EIS on behalf of consenting Federal agencies, State and other non-Federal entities which may be involved in the same project or group of related actions aggregated on a functional or geographical basis.

(2) *Cooperating agency.* The procedure established in paragraph (c)(1) of this section shall assist the

applicant determination of the actions to be taken and the procedure to be followed:

(i) As a lead agency; and in this case, its designation of cooperating agencies as provided in § 58.27(c) and in accordance with the requirements of 40 CFR 1501.6 of the NEPA Regulations and within certain conditions, the involvement of State and local agencies or private entities in accordance with 40 CFR 1506.2 and 1501.2(d);

(ii) In the request to potential lead agencies that a lead agency be designated; and upon such designation,

(iii) As a cooperating agency pursuant to the provisions of 40 CFR 1501.6 and § 58.27.

(3) *Scoping process.* The process carried out by an applicant for determining the scope of issues to be addressed in the environmental review of a proposed action may be initiated as a tiered process integrated in the basic planning efforts prescribed in § 58.14; or it may be initiated either as a separate process or integral with the basic planning scoping process for the related statutory environmental review and consultation procedures prescribed in §§ 58.22 through 58.24. At the project level and for all actions which have been determined to require an EIS, the scoping process shall begin after the applicant notice of intent to file an EIS. As part of the scoping process under 40 CFR 1501.7, the applicant shall:

(i) "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), _____ . An agency may give notice in accordance with § 58.17(a).

(ii) "Determine the scope (§ 58.3(b)) and the significant issues to be analyzed in depth in the environmental impact statement.

(iii) "Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 58.19), 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.

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

(v) "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 consideration.

(vi) "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 § 1502.25 (See § 58.22(d))

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

An applicant shall revise the determinations made during the scoping process 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.

(4) *Public hearings—Procedure.* Prior to the preparation and distribution of a draft EIS, the applicant shall determine whether or not it will conduct a hearing or hearings at which members of the public may be heard respecting the preparation and contents of the draft EIS. The applicant should also determine whether or not separate public hearings shall be held concerning the draft EIS, or whether such public hearings shall be combined with other public hearings pertaining to the application of the applicant. All such public hearings concerning a draft EIS shall be preceded by a notice of public hearing, which shall be published and disseminated in the same manner as a notice of intent to file an EIS as set forth in § 58.17(b), at least 15 days prior to such hearing, and which shall: (i) State the date, time, place, and purpose of the hearing; (ii) describe the project, its estimated costs, and the project area; (iii) state that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard; (iv) state the name and address of the applicant and the certifying officer of the draft EIS can be obtained, whether in person or by mail, and any charges that may apply.

(d) *Public Hearings—Factors to consider.* The determination of whether or not public hearings shall be held prior to distribution of a draft EIS or after such distribution, or at any other time during the environmental review process, shall be within the reasonable discretion of the applicant. In determining whether or not to hold such

public hearings on environmental issues, either separately, or in combination with other proceedings relating to the application of the applicant, the following factors should be considered:

(1) The magnitude of the projects, in terms of economic costs, the geographic area involved, and the uniqueness of size of commitment of the resources involved; (2) the degree of interest in or controversy concerning the projects, as evidenced by requests from the public, or from Federal, State, or local authorities, for information, or that a hearing be held; (3) the complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the applicant in carrying out its environmental responsibilities respecting the particular projects; (4) the extent to which public involvement has been achieved with respect to environmental concerns through other means, such as other public hearings, citizen participation in the development of the applicant's community development program and in formulation of its application, meeting with citizen representatives, and written comments on the particular projects.

(e) *Draft EIS.* A draft EIS shall be prepared in accordance with Part 1502 of the NEPA Regulations and in the manner prescribed by the guiding principles of 40 CFR 1502.2 set forth in HUD-399-CPD, *Environmental Reviews at the Community Level*. Copies of the draft EIS shall be sent by the applicant to:

(1) The Headquarters of the U.S. Environmental Protection Agency, Office of Federal Activities, Mail Code A-104, Room 537W, 401 M Street, SW., Washington, D.C. 20460. The applicant is required to file 5 copies of the draft EIS with the EPA headquarters in order to fulfill the official filing requirements as set forth in the CEQ guidelines. Upon filing of the draft EIS with EPA Headquarters, a notice that the applicant has prepared a draft EIS will be published by EPA in the Federal Register which normally will be on the Friday of the week following the one in which EPA received the required number of copies. There shall be a minimum review period of 45 days for the draft EIS plus any extensions thereof initiated or granted by the applicant. A draft EIS must be on file with EPA at least 90 days prior to submission to HUD of a certification and request for release of funds for the particular project pursuant to § 58.30.

(2) Simultaneously with the official filing set forth in paragraph (e)(1) of this section, five (5) copies will be

transmitted to the appropriate Regional Office of the U.S. Environmental Protection Agency in order to fulfill the requirements of section 309 of the Clean Air Act.

(3) Copies shall also be transmitted to Federal agencies whose areas of jurisdiction of law or special expertise are involved, to the applicable OMB-designated A-95 clearinghouses, to appropriate local agencies and entities, including local and area planning agencies, and groups or individuals known by the applicant to have an interest in the proposed action of the applicant.

(4) The appropriate HUD Area and Regional Office and to the HUD Headquarters Library, Eighth Floor, U.S. Department of Housing and Urban Development, Washington, D.C. 20410 (one copy each).

(5) Copies shall also be made available to the public at the offices of the applicant and at public libraries and either copies, or summaries, of the draft EIS, must be made available, upon request, to persons who request them.

(f) *Final EIS.* A final EIS shall be prepared in accordance with 40 CFR Part 1502 of the NEPA Regulations and in the manner and format provided in HUD-399-CPD, *Environmental Reviews at the Community Level*. The final EIS must take into account and must respond to the comments received as the result of circulation of the draft EIS. The final EIS, including all comments received and the applicant's responses thereto, shall be filed with:

(1) The U.S. Environmental Protection Agency, Office of Federal Activities, Mail Code A-104, Room 537W, 401 M Street, SW., Washington, D.C. 20460. The applicant is required to file 5 copies of the final EIS with the EPA headquarters in order to fulfill the official filing requirements as set forth in the CEQ guidelines. Upon filing of the final EIS with EPA headquarters, a notice that the applicant has prepared a final EIS will be published by EPA in the Federal Register.

(2) Simultaneously with the official filing set forth in paragraph (f)(1) of this section, five (5) copies shall be transmitted by the applicant to the appropriate Regional Office of the U.S. Environmental Protection Agency in order to fulfill the requirements of section 309 of the Clean Air Act.

(3) Copies shall also be transmitted to all agencies and individuals who commented on the draft EIS, to A-95 clearinghouses, appropriate Federal, State, regional and local agencies, and shall be made available to the public.

(4) The appropriate HUD Area and Regional Office and to the HUD Headquarters Library, Eighth Floor, U.S. Department of Housing and Urban Development, Washington, D.C. 20410 (one copy each).

(5) A final EIS must be on file with EPA not less than 30 days prior to submission to HUD of a certification and request for release of funds for the particular project pursuant to § 58.30. If the final EIS is filed within 90 days after publication by EPA in the Federal Register of notice of receipt of the draft EIS, then the minimum 30-day period for review of the final EIS, and the 90-day period provided for the § 58.17(e) will run concurrently, to the extent that they overlap.

(g) *Waivers from EIS time requirements.* Waivers from the time requirements specified for the draft and final EIS may be requested by the applicant. Requests should be submitted to the EPA Office of Federal Activities, Room 537W, Mail Code A-104, 401 M Street SW., Washington, D.C. 20460 accompanied by a justification for the request.

(h) *Supplemental EIS.* A supplemental EIS may have to be prepared for either a Draft or a Final EIS in those cases where an applicant makes substantial changes in the proposed project; or to update the EIS when new circumstances and information become available during the process of environmental reviews; or to update prior environmental reviews for their re-use in accordance with the provisions of § 58.19. The procedures for Supplemental EIS's shall be in accordance with the updating provisions of § 58.19(a). Such supplemental EIS's shall be subject to the same filing and dissemination and time requirements as for Draft and Final EIS's being updated, including the procedures for review and comments unless alternative procedures are approved by the CEQ as prescribed in 40 CFR 1502.9 (o)(4).

(i) All applicant EIS's and the documentation related thereto including comments and actions and decisions pursuant to 40 CFR 1505.2 shall be made a part of the applicant's environmental review record (§ 58.11).

§ 58.18 Limitation on action pending clearance.

During the environmental review process and pending completion of the appropriate environmental clearance procedures, the applicant may not use any funds to take any action with respect to the project under review where such action might have an adverse environmental effect, would limit choices among competing

alternatives, or might alter the environmental premises on which the pending clearance is based in such fashion that the validity of the conclusions to be reached would be affected. Except as to exempt activities under § 58.21, no Title I funds will be released for a project until the Secretary shall approve said release of funds and the related certification. (See §§ 58.30, 58.31, and 58.32.) No Title I funds may be used to reimburse project costs subject to this part which have been incurred in advance of the Secretary's approval of the release of such funds and the related certification. Notwithstanding the foregoing sentence, on or after June 28, 1979, relocation and acquisition costs may be reimbursed following the Secretary's approval of the release of funds and the related certification covering the project in connection with which such costs were incurred: *Provided*, That the payment of such costs is required by 24 CFR Part 42, and such costs occurred on or after the date of the submission of an application for assistance under Title I which includes that project, but prior to the date of the certification covering the project.

§ 58.19 Use of prior environmental reviews.

This section defines cases in which an EIS must be updated and cases in which an applicant may make use of a relevant published EIS for a new project activity; and it indicates cases of continuing activities in which a new environmental review is not required and cases in which they are required.

(a) *Procedures for Supplemental EIS's.* The following procedures shall be followed when new information becomes available or circumstances change during the process of environmental reviews.

(1) If information arises after a draft EIS has been transmitted for circulation, but prior to the expiration date for receipt of comments, then copies of any revision, amendment, addendum issued as a Supplemental EIS to the draft EIS shall be transmitted to all parties to whom the draft EIS was transmitted, as provided in § 58.17, and to all other parties who have commented thereon, and, where appropriate, the applicant shall extend the time for comment on the draft EIS.

(2) If the time for comments on the draft EIS has expired, but the final EIS has not been circulated, then any revision, amendment or addendum issued as a Supplemental EIS to the draft EIS shall be transmitted to all parties to whom the draft EIS was transmitted and to all parties who

commented thereon, and a reasonable time for receipt of comments shall be fixed and allowed. The final EIS shall then reflect the additional factors and contain the comments and responses respecting them.

(3) If the final EIS has been circulated, then it shall be revised and reissued or a Supplemental EIS shall be prepared and distributed, as appropriate, to all parties to whom the final EIS was distributed and to others who have commented thereon. Such revision or Supplemental EIS shall be subject to the same review and comment procedures, including those respecting time, as the final EIS which is being updated.

(b) *Use of prior environmental impact statements.* Where any final environmental impact statement has been listed in the **Federal Register** for a project or where an areawide or similar broad scale final EIS has been so listed and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for that subsequent project if the conditions set forth below in subparagraphs (1), (2), (3), and (4) are met.

(1) The environmental review record contains a decision based on a finding that the proposed project is not a new major Federal action significantly affecting the quality of the human environment.

(2) In addition to the content prescribed elsewhere in this section, the decision shall include:

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

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

(iii) 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 environmental impact statement;

(iv) 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.

(3) The prior final environmental impact statement has been kept current in the following ways:

(i) The EIS has been filed or updated within five (5) years; and

(ii) The EIS has been updated in accordance with significant revisions

made to the underlying assumptions (covering at least those items in § 58.19(b)(2)(iii) above) as may be stated in the comprehensive plan or major elements thereof or other public policy revisions; and

(iii) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which the Department of Housing and Urban Development has determined to have significant environmental impact on the areas covered by the prior EIS.

(4) 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.

(c) *Environmental review findings of no significant effect.*—(1) *No new environmental review.* A project which is a continuation of a previously commenced activity or activities for which environmental review or clearance has been completed and for which circumstances, including the availability of a additional data or advances in technology, have not changed significantly, requires no new environmental review or clearance by virtue of such project's funding under Title I. The applicant shall prepare a written decision to that effect, which shall set forth the reasons therefor.

(2) *Requirement for new environmental review.* A project which is a continuation of a previously commenced activity or activities for which no environmental review has been completed or for which a prior EIS does not meet the requirements of § 58.19(b) must be subjected to an original or updated environmental review under this part. Such review shall be carried out with respect to the entire project to the extent that the entire project or portions of it could still be altered in light of environmental considerations.

§ 58.20 Financial settlement of urban renewal projects.

(a) *Project undertaken to facilitate early financial settlement.* If an applicant proposes to submit an application for financial settlement of an urban renewal project prior to substantial completion thereof pursuant to 24 CFR 570.804, which will be coupled with a proposal to use Title I grants pursuant to 24 CFR 570.801 for the purpose of facilitating such financial settlement, the latter proposal shall be deemed a project which is subject to the following additional requirements and conditions:

(1) Section 58.19(b) shall be inapplicable to such project:

(2) The environmental review for such project shall include an assessment of the environmental consequences of the financial settlement of the urban renewal project prior to substantial completion thereof;

(3) The applicant shall include the following sentence with the notice required by § 58.30(a):

Applicant will use the project to establish a financial basis, and will apply to the Secretary of HUD for financial settlement prior to substantial completion of the (*identify urban renewal project or NDP*) pursuant to 24 CFR 570.803 and 570.804.

(b) *Financial settlement prior to substantial completion of urban renewal project involving surplus of capital grant funds.* A financial settlement pursuant to 24 CFR 570.803 and 570.804 of an urban renewal project prior to substantial completion thereof which would result in a surplus of capital grant funds, \$500 or more of which will be devoted to eligible Title I activities other than exempt activities under § 58.21 together with the proposed use(s) of the surplus shall be deemed a project and shall be subject to the following additional requirements and conditions:

(1) Section 58.19(b) shall be inapplicable to such project;

(2) The environmental review for such project shall include an assessment of the environmental consequences of the financial settlement of the urban renewal project prior to substantial completion thereof, and of the proposed use(s) of the surplus except any use(s) set forth in § 58.21;

(3) The application for financial settlement pursuant to 24 CFR 570.803 and 570.804 and use of the surplus resulting therefrom shall be treated as a request for release of funds and shall be subject to the requirements of Subpart C of this Part. However, the applicant shall use the following sentence in lieu of the first sentence set forth after the word "indicated" in § 58.30(a)(6):

(*Name of applicant*) will apply for financial settlement prior to substantial completion of (*identify urban renewal project or NDP*) and will undertake certain activities, all as described above, with surplus capital grant funds resulting from financial settlement.

(4) The surplus of capital grant funds resulting from such financial settlement may be used for a project which consists entirely of exempt activities under § 58.21 and/or activities which are subjected to environmental assessment pursuant to § 58.20(b) without further compliance with this Part.

(c) *HUD environmental review of certain financial settlements.* Prior to

acting upon any application submitted pursuant to 24 CFR 570.803 and 570.804 for financial settlement of an urban renewal project which is not substantially completed and for which the environmental consequences of financial settlement prior to substantial completion thereof have not been assessed by the applicant pursuant to § 58.20 (a) or (b), HUD shall itself conduct an assessment of the environmental consequences of the proposed financial settlement. However, if HUD finds that the applicant should have conducted an environmental assessment pursuant to § 58.20 (a) or (b) but failed to do so, the application for financial settlement shall be rejected and the applicant shall be required to comply with the environmental assessment requirements of § 58.20 (a) or (b) as appropriate, on a catchup basis, as a condition precedent to resubmission of its application.

(d) *Financial settlement after substantial completion of urban renewal project.* Notwithstanding any other provision of this part an assessment of the environmental consequences of financial settlement pursuant to 24 CFR 570.803 and/or 570.804, or an urban renewal project which is substantially completed, is not required. However, the applicant or HUD as appropriate, shall prepare and maintain in its records a written finding as to the substantial completion of the urban renewal project.

(e) *Definition of Substantial Completion.* For the purposes of this Section and as applied to an urban renewal project, this term means that:

(1) Ninety percent (90%) or more of site improvement work has been completed and the remainder is under contract;

(2) Ninety percent (90%) or more of demolition work has been completed and the remainder is under contract;

(3) Relocation of all occupants of at least ninety-eight percent (98%) of the housing units in the relocation workload, or of all but five (5) such housing units, whichever is the lesser, has been completed;

(4) Relocation for at least ninety-five percent (95%) of all cases in the nonresidential relocation workload, or for all but ten (10) such cases, whichever is the lesser, has been completed;

(5) At least ninety percent (90%), by estimated cost, of all relocation payments have been made;

(6) With respect to each park, playground, public building or other public facility to be provided as a noncash local grant-in-aid:

(i) All land necessary for the provision thereof has been conveyed to or is in the

ownership of the providing entity or is covered by an unconditional purchase, or similar, agreement,

(ii) All necessary planning agency or other public body approvals have been obtained,

(iii) All, or virtually all, of the funds necessary for the provision thereof have been authorized by the governing body of the providing entity and all and any necessary bond referendums or other public approvals have been obtained,

(iv) Complete working drawings and specifications have been prepared for the construction thereof and firm supportable estimates of the costs incident to provision thereof have been developed, and

(v) A firm assurance exists of timely completion and in any event, of completion within five (5) years from the date of the assurance;

(7) With respect to dwelling units not to be demolished, at least ninety-five percent (95%) comply with applicable codes and at least seventy-five percent (75%) comply with applicable property rehabilitation standards established for the urban renewal project: *Provided*, that in any event, project activities may be deemed complete in regard to dwelling units not to be demolished where the following conditions exist:

(i) Area decline has been arrested and stability and self-generating renewal assured,

(ii) Public facilities and services have been and will continue to be, provided to support continued stability,

(iii) Local financial institutions are making property loans in the area, and

(iv) The community will continue an adequate level of code enforcement activities in the area;

(8) All project land acquisition has been completed; and

(9) An amount equal to the HUD approved land disposition value of all acquired project land has been credited to the urban renewal project account(s): *Provided*, that for all project land actually sold, the full sale price thereof shall be so credited and for all leased or unsold project land, the full amount of the HUD approved estimate of the disposition value thereof shall be so credited from community development block grants or local funding sources.

§ 58.21 Exempt activities and categorical exclusions

(a) *Activities exempt by statute.* The following activities, to the extent eligible for assistance under Title I, are exempt from the requirements of this Part:

(1) Environmental studies or assessments.

(2) Activities authorized by section 105(a)(12) of Title I and 24 CFR 570.205 and 571.205.

(b) *Categorical exclusions.* Activities and projects (see definitions at § 58.3 and aggregation requirements of § 58.5(d) which consist solely of the following kinds of activities shall be categorically excluded (see definition § 58.3(b)) from the requirements of this part:

(1) Administrative costs as provided by 24 CFR 570.206 and 571.206.

(2) The payment, under authority to section 105(a)(10) of Title I, of principal and interest on outstanding urban renewal project loans as defined in 24 CFR 570.800(b) where such payment is not covered by § 58.20 or where such payment is not associated with a change in the related urban renewal project.

(3) The payment, under authority of section 108(c) of Title I, of principal and interest due on notes or other obligations guaranteed pursuant to section 108; and the repayment, under authority of section 108; and the repayment, under authority of section 108(e), due the United States as a result of guarantees made pursuant to section 108.

(4) The payment of engineering and design costs associated with an activity eligible under 24 CFR 570.201 through 570.204.

(5) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements eligible under §§ 570.201(c) and 571.201(c) and economic development activities authorized pursuant to §§ 570.203 and 571.203, subject to the following limitations:

(i) Acquisition for continued use. The article to be acquired is in place and will be retained in the same use that existed at the time of acquisition, without change in size, capacity or character.

(ii) Acquisition, construction, reconstruction, or installation for replacement or upgrading. The article will replace or upgrade a substantially identical original article, without more than a minimal change in its use, size, capacity, or location (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving streets, and modification of buildings to provide access for elderly and handicapped persons).

(iii) Acquisition construction, reconstruction, or installation to furnish or equip. The article will furnish or equip a site (other than furnishings and personal property prohibited by §§ 570.207(b)(2) and 571.207(b)(2)) where its placement and use is consistent with

the use of that site and the action will not change the use, size, capacity, or character of the site (e.g., landscaping, street furniture, equipping established parks and playgrounds), and fire protection equipment consistent with the eligibility requirements prescribed by § 570.201(c)(6)(ii).

(6) Interim assistance eligible under § 570.201(f) and single purpose grants for imminent threats to public health or safety pursuant to § 570.432.

(7) Public services which:

(i) Are in support of a neighborhood strategy area program which consists entirely of activities exempt under this part; or

(ii) Are a continuation of services after completion of concentrated physical development activities of a neighborhood strategy area program pursuant to § 570.201(e)(1); or

(iii) Are provided by nonprofit or similar organizations in accordance with §§ 570.204(c)(4) and 571.204(c)(4) where the services are not part of a block grant funded physical development project.

(8) Rehabilitation of buildings and improvements as set forth in §§ 570.202 and 571.202, except paragraph (f):
Provided, That:

(i) Unit density is not increased more than 20 percent; or

(ii) The project does not involve changes in land use from residential to nonresidential use or from nonresidential to residential use, or from one class of residential use (for example, a single family detached dwelling) to another class of residential use (such as single family attached dwelling, low-rise or high-rise multiple dwelling units); or

(iii) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(9) Combinations of the above activities.

(c) *Other program requirements not affected.* The exemption or categorical exclusion of activities or projects from environmental review procedures pursuant to this section, does not relieve the applicant from compliance with the historic preservation requirements of § 58.24, the flood plains and wetland requirements of § 58.23, other authorities set forth at § 58.1(a)(3), the responsibilities assumed pursuant to § 58.5(a), and other applicable program requirements set forth at 24 CFR Parts 570 and 571. Documentation of compliance with these other requirements shall be contained in the environmental review record. The applicant shall not carry out an activity

exempt or categorically excluded under this section without:

(1) Completing the environmental review record showing compliance with the requirements and environmental procedures of historic preservation, floodplains and wetlands and other applicable authorities; and

(2) Providing an opportunity for public comment on propositions that historic properties are not involved.

§ 58.22 Other environmental procedures.

In addition to the NEPA environmental review and decisionmaking responsibilities implemented by the NEPA Regulations and this part, the applicant shall be subject to the requirements of executive orders, legislations and the implementing regulations and procedures promulgated under these statutory authorities cited in § 58.1(a)(3). The following procedures and those prescribed under §§ 58.23 and 58.24 shall be applied to all applicant actions covered by Title I and to related actions for which the applicant is the lead agency as defined in § 58.3(b)(7).

(a) *Coastal zone.* If an applicant's project may affect coastal zones or coastal waters as defined in Title III of the Coastal Zone Management Act of 1972 (Pub. L. 92-583), the applicant shall consult the appropriate state offices and with the appropriate office of the Department of Commerce during the environmental review to determine the probable impact of the proposed project.

(b) *Fish and wildlife.* If an applicant's project will result in the control or structural modification of any stream or body of water, the applicant shall consult with the Fish and Wildlife Service of the Department of the Interior; the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, Department of Commerce; the U.S. Army Corps of Engineers and the appropriate State agency. This consultation shall follow the procedures in the Fish and Wildlife Coordination Act of (Pub. L. 85-624) and shall occur during the environmental review as provided above.

(c) *Endangered species.* If an applicant's action may affect endangered species defined under Section 4 of the Endangered Species Act of 1973 (Pub. L. 93-205) as amended by the Endangered Species Amendment Act of 1978 (Pub. L. 95-632), the applicant shall consult with the Department of the Interior and the Department of Commerce on compliance with the procedure in Section 7 of that Act.)

(d) *Tiering of Related Procedures.* As a part of the tiered scoping process initiated by the applicant in the early environmental review activities under this §§ 58.23 and 58.24, the applicant shall:

(1) Identify the environmental issues to be addressed by a proposed project under the statutory authorities cited in § 58.1(a)(3);

(2) Determine the tiering coverage of such issues in its scoping process to ensure that the concerns of the environmental statutes are taken into consideration and satisfied concurrently with the major decision points of the environmental review procedure of this part;

(3) Determine as a result of the scoping process the proposed activities and projects which shall:

(i) When applicable, require an environmental impact statement directly without going through the intermediate steps of the environmental review process of this part on the basis that it may significantly affect the particular concern of the related statute;

(ii) Require specific actions on the part of the applicant, although they may be activities and projects which are categorically excluded from the environmental review requirements of this part, and for which, therefore, an environmental review record shall be maintained; and

(iii) Comply with the procedures of this section and of §§ 58.23 and 58.24 concurrently or combined with the environmental assessment or environmental impact statement procedure of this part (§§ 58.16 and 58.17).

(4) Requests for consultation and the results of such consultation shall be documented in writing. In all cases where consultation has occurred, the agencies consulted should receive copies of the Notice of No Significant Impact together with a copy of the environmental assessment prepared in the proposed action. If, under paragraph (d)(3)(i) of this section a decision has been made to prepare an EIS, then the required consultation shall be deferred until the preparation of the draft EIS.

§ 58.23 Floodplains and wetlands.

Applicants must comply with the requirements of section 2(a) of Executive Order 11988 on floodplain flood plain management and with sections 2 and 5 of Executive Order 11990 on protection of wetlands. In so doing, applicants shall use the floodplain management regulations of HUD set forth in 24 CFR Part 55 implementing the guidelines prepared by

the U.S. Water Resources Council and published February 10, 1978, at 43 FR 6030. The following procedures apply where either of the Executive orders is applicable.

(a) *Early public review.* In carrying out the requirements of section 2(a)(4) of Executive Order 11988 and of section 2(b) of Executive Order 11990, applicants shall publish a notice providing opportunity for early public review as soon as it is determined that a project is proposed to be located in a floodplain or wetland as defined by the respective Executive order. Such notice may be brief, but shall: (1) Identify the affected project; (2) set forth the facts and reasons for such proposed project; (3) state that the applicant has additional information on the proposal available and where such information may be obtained; (4) indicate that comments may be submitted to the applicant until a certain date which shall not be less than 15 days following its first publication and dissemination; (5) state the name and address of the applicant and the certifying officer of the applicant; and (6) be dated as of the time it is first published and disseminated. Copies of this notice shall be published and disseminated in the same manner as a notice of intent to file an EIS as described at § 58.17(b).

(b) *Notice of explanation.* The notice of explanation of why a project is proposed to be located in a floodplain as required by section 2(a)(2)(ii) and 2(a)(3) of Executive Order 11988 may be published and distributed at the same time as the notice required by § 58.30(a). In such cases the notices shall be published and disseminated in the manner specified at § 58.17(b).

(c) *Certification.* Submission by the applicant of the certification form required by § 58.30(c) shall also be considered certification that the requirements of Executive Orders 11988 and 11990 have been met by the applicant.

§ 58.24 Historic preservation.

Applicants must comply with the following requirements relating to the Preservation of Historic and Archeological Data Act of 1974, section 106 of the National Historic Preservation Act of 1966 and Executive Order 11593 whenever any property or district included in or found by the Secretary of the Interior pursuant to 36 CFR Part 800 to be eligible for inclusion in the National Register provided for by such Act, is in the boundaries, or within the vicinity of, a project which is to be funded, in whole or in part, by Title I funds.

(a) As part of the environmental review process each project shall be examined in accordance with the procedures for protection of historic and cultural properties (36 CFR Part 800) for the purpose of identifying any National Register and National Register-eligible properties and determining whether or not the project may affect the property. If the property is not affected by the project, the applicant shall so state, in the environmental review record.

(b) If the project will affect the property, the applicant, as part of the environmental review process, shall carry out the procedures set forth at 24 CFR Part 59 of the HUD Regulations.

§ 58.25 Projects requiring an EIS.

Preparation and dissemination of an EIS is required when the environmental review process, pursuant to § 58.15(d)(2) indicates that a project may have a significant environmental effect and for the following types of projects:

(a) *Residential projects.* Residential projects which would remove, demolish, convert, or substantially rehabilitate existing housing units (but not including rehabilitation projects exempted under § 58.21(b)(4)), or which would construct or install housing units, or which would provide sites for housing units, in a quantity which equals or exceeds the applicable threshold as follows:

(1) Five hundred units for projects which are to be located outside a standard metropolitan statistical area (SMSA), or which are to be located within an SMSA county but beyond the urbanizing belt as defined in paragraph (a)(3) of this section; or

(2) For projects which are to be located in the urbanizing belt of an SMSA county as defined in paragraph (a)(3) of this section, the applicable threshold is that number in Table 1 opposite the population range that fits the SMSA county in which the project is to be located.

(3) Urbanizing belts are identified as the delineated urbanized areas, as defined by the Bureau of the Census, plus a 2-mile zone around the outer boundaries of such areas. In cases where this 2-mile zone borders or includes a portion of an incorporated place lacking census tracts or, when the 2-mile zone borders or includes a portion of a census tract, the next outer boundary of such incorporated place or census tract, may be used to delineate the out-limit of the urbanizing belt. Notwithstanding the foregoing, an urbanizing belt shall not extend into a county or jurisdiction which is not a part of an SMSA. If the outer boundary of an urbanizing belt extends into another

SMSA, then the EIS threshold for any project which has 50 percent or more of its area in such other SMSA shall use the threshold for such other county.

Also, when an applicant can document that significant development has occurred beyond, but contiguous to, the defined urbanized area, HUD may approve redefinition of the urbanizing area plus a 2-mile belt beyond.

Table 1—Automatic EIS Thresholds Applicable to Housing Projects

(For use in connection with § 58.25(a))

| SMSA county population range | Automatic threshold (units) |
|------------------------------|-----------------------------|
| 1,500,000 = plus | 2,900 |
| 1,000,000 to 1,499,999 | 2,100 |
| 750,000 to 999,999 | 1,800 |
| 600,000 to 749,999 | 1,500 |
| 500,000 to 599,999 | 1,200 |
| 400,000 to 499,999 | 1,000 |
| 300,000 to 399,999 | 900 |
| 200,000 to 299,999 | 800 |
| 100,000 to 199,999 | 700 |
| 50,000 to 99,999 | 600 |
| Under 50,000 | 500 |

Notes.—Note I. The thresholds are applied to population figures for an SMSA county or county equivalent (independent city) based on the latest Bureau of the Census population estimates published in the P-25 Series of Current Population Reports. Although the initial application of these thresholds will be to population data for 1975, revised figures may be used as they become available for subsequent years. Where the population estimate for a given SMSA county indicates that there has been a loss in population since the last decennial census, the census figures from that decennial census may be used.

Note II. It is recognized that in high density areas size alone need not necessarily imply a significant impact on the quality of the human environment. Therefore the numerical threshold requirements of this section for an EIS do not apply and are automatically waived for projects in which the number of dwelling units to be removed, demolished, converted or emplaced exceed the numerical thresholds in Table 1 when:

(i) Typical densities in immediate adjacent areas of such projects exceed 50 units per acre (or equivalent); and

(ii) The projects are otherwise assisted by HUD and HUD has waived the requirements for an EIS pursuant to the general environmental review regulations set forth in 24 CFR Part 50.

(b) *Hospitals and nursing homes.* Projects which provide a site or sites for hospitals and nursing homes shall utilize the thresholds set forth above in § 58.25(a) and Table 1 therein, except that the term "bed" shall be substituted for the term "housing unit."

(c) *Water and sewer projects.* Water and sewer projects capable of supporting additional residential development in partially developed and

undeveloped areas at an estimated scale which meets the applicable thresholds in Table 1. For nonresidential or mixed used areas, that portion of the hydraulic capacity allocable to additional development shall be converted into the equivalent number of housing units, using standard flows per unit for design assumptions, and the results compared with Table 1 for determining whether the threshold is met or exceeded. In determining net potential development, the applicant shall consider the basic design assumptions used in determining the hydraulic capacity of the project and the land uses contemplated within the service area. Allowances may be made for significant factors such as standby water capacity for fire flow or the storm water of combined sewers which do not directly support new development, and for present development which is to be connected to or served by the project. However, the development potential of existing open areas along water or sewer lines as well as for the target service area must be included in the threshold calculation. The threshold calculation shall also be documented in the environmental review record.

(d) *Transitional EIS requirement.* The system of flexible EIS thresholds set forth in paragraph (a), (b), and (c) of this section have been in effect since June 25, 1979 under the present environmental review procedures of this part. However, since some environmental reviews will be in process when this Interim Rule becomes effective, the following transition rules shall continue to apply to those situations where an EIS would have been required under the previous thresholds but will not be required under the new flexible thresholds.

(1) Where a draft EIS has been published for public comment, the EIS process, including the issuance of a final EIS, shall be completed or the termination process described in subparagraph (3) of this paragraph shall be completed before the release of funds actions prescribed by § 58.30 are taken.

(2) Where a notice of intent to file an EIS has been published pursuant to § 58.17(a) but a draft EIS has not been published for public comment, the EIS process shall be completed or the termination process described in subparagraph (3) of this paragraph shall be completed before the release of funds actions prescribed by § 58.30 are taken.

(3) Where an EIS already in process is to be terminated, as provided by subparagraph (1) or (2) of this paragraph, the applicant shall make the level of clearance finding set forth at § 58.15(d)(1) that a request for release of

funds for the project is not an action which may significantly affect the quality of the human environment; shall give full consideration to all comments which may have been received in response to a notice of intent to file an EIS or in response to a draft EIS; shall comply with the requirements of § 58.16; and shall publish a notice of intent to terminate an EIS. Such notice shall be published and disseminated in the same manner as a notice of intent to file an EIS as described at § 58.17(b). However, if a draft EIS was published, EPA shall be requested to have such notice published in the Federal Register. The notice may be brief but shall identify the name, character, site, and location of the project for which further processing of an EIS is to be terminated, set forth the circumstances and reasons for discontinuing further EIS processing, indicate that the finding required by this subsection has been completed and indicate where and when it is available for public review, describe how any comments received in response to a notice of intent to file an EIS or in response to a draft EIS where considered, and state that the applicant proposes to submit the request for release of funds for the project under consideration in no less than fifteen (15) calendar days from the date the notice is published. This notice may be combined with the notices required by § 58.16(a) and by 58.30(a).

§ 58.26 [Reserved]

§ 58.27 Interaction of applicant with Federal agencies and other non-Federal entities—Lead agency and cooperating agency role.

(a) *Interaction with Federal agencies.* If, as provided by Section 1501.5 of the NEPA Regulations, one or "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;" or

(3) Is involved in a project to be jointly funded by other Federal agencies and by HUD under Title I; and if the preparation of an EIS is required by this part;

THEN, a single agency, either the applicant or the other Federal agency, should assume responsibility as the "lead agency" for the preparation and clearance of an EIS, with the other agencies providing assistance. In the event that the regulations of none of the Federal agencies other than HUD require an EIS for such project, but the applicant determines under this part

that an EIS is required, then the applicant shall assume the "lead agency" role, or shall otherwise prepare an EIS, which shall comprehend the actions of the other Federal agency or agencies related to the project, as provided in the NEPA Regulations and hereunder:

(i) "If an action falls within the provisions of (this) 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 the cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay.

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

(b) *Joint reviews—Designation of lead agency.* All determinations respecting joint environmental review or designation of a "lead agency" to perform an environmental review shall be made and agreed upon between the applicant and any Federal agency involved, where practicable.

(1) *Designation criteria.* The designation of the lead agency in the case where there are several potential agencies ready to assume such a role, shall be based on the following criteria prescribed in order of descending importance by Section 1501.5 of the NEPA Regulations:

(i) "Magnitude of agency's involvement.

(ii) "Project approval/disapproval authority.

(iii) "Expertise concerning the action's environmental effects.

(iv) "Duration of agency's involvement."

(2) *Agreement procedure.* In the event an applicant and a Federal agency are unable to reach such agreement, the applicant shall notify HUD, and HUD, with the advice and assistance of CEQ, will seek to obtain such agreement based on the following procedure set forth in Section 1501.5(e) of the NEPA Regulations: "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:

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

(ii) "A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria

specified in (paragraph (b)(1) of this section.)

"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."

(c) *Cooperating agencies.* The designation of the cooperating agencies in those cases where there is more than one agency including the applicant ready to assume such a role shall entail the following actions on the part of the applicant either in a lead agency or as a cooperating agency capacity: pursuant to the provisions of 40 CFR 1501.6 cited hereunder:

(1) "The lead agency shall:

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

(ii) 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.

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

(2) "Each cooperating agency shall:

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

(ii) Participate in the scoping process.

(iii) 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.

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

(v) 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."

"A cooperating agency may, in response to a lead agency's request for assistance in preparing the environmental impact statement * * * 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."

(d) *Interaction with non-Federal entities.* Applicant cooperation with

State agencies and other non-Federal entities shall be in accordance with the provisions of 40 C.F.R. 1506.2 which are as follows: "(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."

§§ 58.28-58.29 [Reserved]

Subpart C—Releases of Funds for Particular Projects

§ 58.30 Release of funds upon certification.

An applicant which has completed all applicable environmental review and clearance requirements as provided in this Part with respect to a proposed project and which desires to submit a

request to HUD for the release of Title I funds for the project, shall comply with the following:

(a) *Publication of notice.* An applicant, at least 7 calendar days prior to submitting the request for release of funds and certification, shall publish and disseminate, a notice to the public doing so in the same manner as a notice of intent to file an EIS, as described at § 58.17(b), using format VII of HUD-399-CPD, Environmental Reviews At The Community Level, or such other equivalent format as may be used by the applicant. An applicant may publish this notice at the same time as that required by § 58.16(b).

(b) *Request for release of funds.* A request for release of funds pursuant to this part shall be addressed to the HUD officer authorized to receive the application of applicant, shall be executed by the certifying officer and may be submitted with or as part of an application, or at any time after submittal of an application. Such request shall in all cases be accompanied by the certification of the applicant as stated at § 58.30(c) and shall:

(1) State the name and address of the applicant;

(2) State that the applicant requests the release of funds for particular projects, identify such projects; and

(3) Be accompanied by the certification described in paragraph (c) of this section.

(c) *Certification.* A certification pursuant to this part shall be addressed to the HUD officer authorized to receive the application of applicant, and shall:

(1) State the name and address of the applicant and be executed by the certifying officer.

(2) Specify that the applicant has fully carried out its responsibilities for environmental review decisionmaking and action pertaining to the projects named in the request for release of funds;

(3) Specify the levels of all environmental clearances carried out by the applicant in connection with each project pertaining to the certification;

(4) Specify the dates upon which any statutory or regulatory time period for review, comment, or other response or action in regard to each such environmental clearance commenced and has expired, or will expire, and that with the expiration of each statutory or regulatory time period the applicant is in compliance with the requirements of this Part;

(5) Specify that the certifying officer is authorized to consent to assume the status of a responsible Federal official,

under NEPA, insofar as the provisions of NEPA apply to the HUD responsibilities for environmental review, decision making and action assumed and carried out by the applicant, and that the certifying officer by so consenting, such officer assumes the responsibilities, where applicable, for the conduct of environmental reviews, decision making, and action as to environmental issues; preparation and circulation of draft and final EIS's; and assumption of lead agency responsibilities for preparation of such statements on behalf of Federal agencies other than HUD when such agencies consent to such assumption;

(6) Specify that the certifying officer is authorized to consent, on behalf of the applicant, to accept the jurisdiction of the Federal courts, for the enforcement of all responsibilities referred to in § 58.30(c)(5); and that the certifying officer so consents on behalf of the applicant and himself in his official capacity only.

§ 58.31 Objections to release of funds.

HUD shall not approve the release of funds for any project until fifteen (15) calendar days have elapsed from the time HUD shall have received the applicant's request for the release of such funds and the certification pertaining thereto or the time specified in the notice published pursuant to § 58.30(a), whichever shall be the later time. Applicants shall not commit any funds which are the subject of any request for the release of funds to any project prior to HUD's approval of such request. Any person or agency may object to an applicant's request for the release of funds and the certification pertaining thereto, but HUD will consider such objections only if the conditions and procedures set forth in this section are satisfied. HUD can refuse the request and certification on any grounds set forth in paragraph (b) of this section. Any decision by HUD approving or disapproving the request for the release of funds and the certification pertaining thereto shall be final.

(a) *Time for objecting.* HUD must receive objections within fifteen (15) days from the time HUD shall have received the applicant's request for the release of funds and the certification pertaining thereto, or the time specified in the notice published pursuant to § 58.30(a), whichever shall be the later time.

(b) *Permissible bases.* (1) That the certification was not, in fact, executed by the certifying officer of the applicant;

(2) That the applicant has failed to make one of the two level of clearance findings pursuant to § 58.15(d), or to make the decision required by § 58.19(b) or § 58.19(c) for the project, as applicable;

(3) That with regard to a project for which the level of clearance finding in § 58.15(d)(1) was made, the applicant has omitted one or more of the steps set forth at: § 58.15(a); § 58.15(b); § 58.15(c)(1); § 58.15(c)(2); § 58.16(a); or § 58.16(b);

(4) That with regard to a project for which the level of clearance finding in § 58.15(d)(2) was made, the applicant has omitted one or more of the steps set forth at: § 58.17(a); § 58.17(b); § 58.17(c) only if applicant has decided to conduct a public hearing as a part of its environmental review of the project; § 58.17(e); or § 58.17(f);

(5) That with respect to a property listed on the National Register of Historic Places, or found to be eligible by the Secretary of the Interior pursuant to 36 CFR Part 800 for inclusion in such Register, and which is affected by the project, no opportunity was given to the Advisory Council on Historic Preservation or its Executive Director to review the effect of the project on the property in accordance with the procedures set forth at 36 CFR Part 800; or

(6) That with respect to a project for which the applicant has decided that § 58.19(b) applies, the applicant has failed to include in the environmental review record the written decision required pursuant to § 58.19(b) or that the applicant's decision is not supported by facts specified by the objecting party; or,

(7) That another Federal agency, acting pursuant to Section 309 of the Clean Air Act, or Section 102(2)(C) of NEPA and implementing regulations, has submitted a written finding to HUD that an applicant's project is unsatisfactory from the standpoint of public health or welfare or environmental quality. This finding shall set forth at least the following:

(i) The Federal agency basis for stating that the applicant's project will have potentially adverse environmental impacts which would cause the violation of national environmental standards or policies or would be of such a severity, geographical scope, duration, or importance as precedent as to warrant HUD's disapproving the release of funds and the certification pertaining thereto;

(ii) The Federal agency's consultations with the applicant and the basis for

failure to reach a satisfactory agreement;

(iii) Factual evidence that the project is environmentally unsound;

(iv) Recommendations for mitigation, alternatives, or other courses of action needed to make the project environmentally acceptable.

(c) *Public and agency objections.* The only bases upon which HUD will consider the objection of any person or agency to the certification of an applicant, or to the approval by HUD of such certification, are set forth at § 58.31(b). Other objections will not be considered by HUD; but may be addressed to the applicant, and the certifying officer of the applicant.

(d) *Procedure.* A person or agency objecting to an applicant's request for the release of funds and the certification pertaining thereto shall:

(1) Submit such objection in writing, to the HUD officer authorized to receive the application of the applicant;

(2) Specify the name, address, and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of the agency;

(3) Be dated when signed;

(4) Specify the bases for objection and the facts or legal authority relied upon in support of the objection;

(5) Indicate that a copy of the objections has been mailed or delivered to the chief executive officer of the applicant.

§ 58.32 Effect of approval of certification.

(a) *NEPA responsibilities of HUD.*

The approval by HUD of the certification of an applicant is deemed to satisfy the responsibilities of the Secretary under NEPA insofar as those responsibilities relate to the applicant and releases of funds under Title I for projects which are covered by such certification.

(b) *Public and agency redress.*

Persons and agencies seeking redress in relation to environmental assessments covered by an approved certification shall deal with the applicant and not with HUD. It shall be the policy of HUD, following the approval of a certification, not to respond to inquiries and complaints seeking such redress, and only to refer such inquiries and complaints to the applicant and the certifying officer of the applicant. Other remedies for noncompliance, in addition to those stated in this part, are set forth at 24 CFR 570.910-913.

(c) *Implementation of environmental review decisions.* Certain projects, due to their nature, importance and scope may require post-review monitoring and

other inspection and enforcement actions on the part of the applicant and/or HUD to assure that decisions adopted through the environmental review process shall be carried out during project development and implementation.

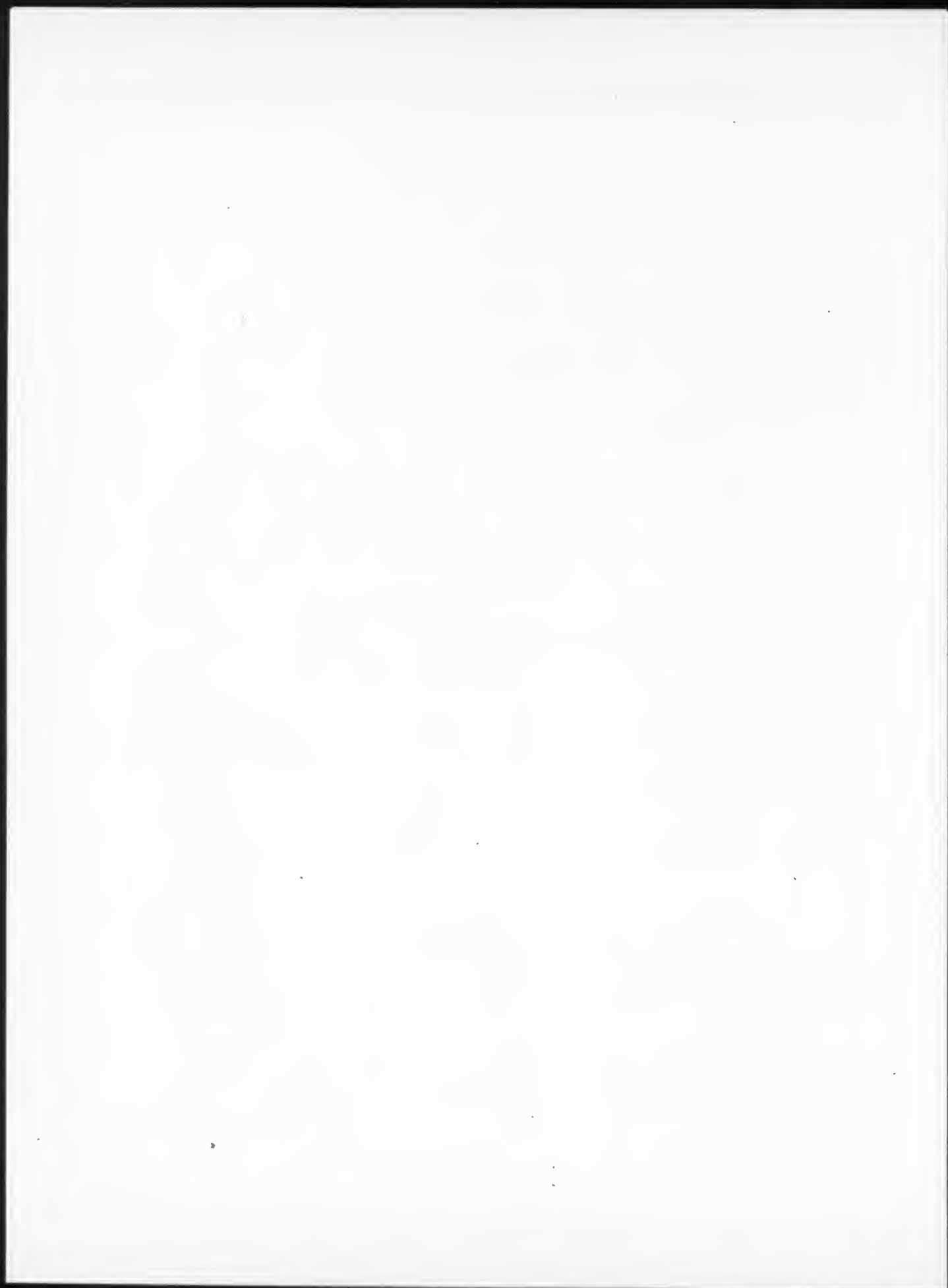
(Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C., on June 25, 1979.

Patricia Roberts Harris,
Secretary of Housing and Urban Development.

[FR Doc. 79-23856 Filed 8-1-79; 8:45 am]

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Federal Register

Vol. 44, No. 150

Thursday, August 2, 1979

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

| Monday | Tuesday | Wednesday | Thursday | Friday |
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.**

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Community Planning and Development—Office of Assistant Secretary—

38842 7-3-79 / Section 312 Rehabilitation Loan Program

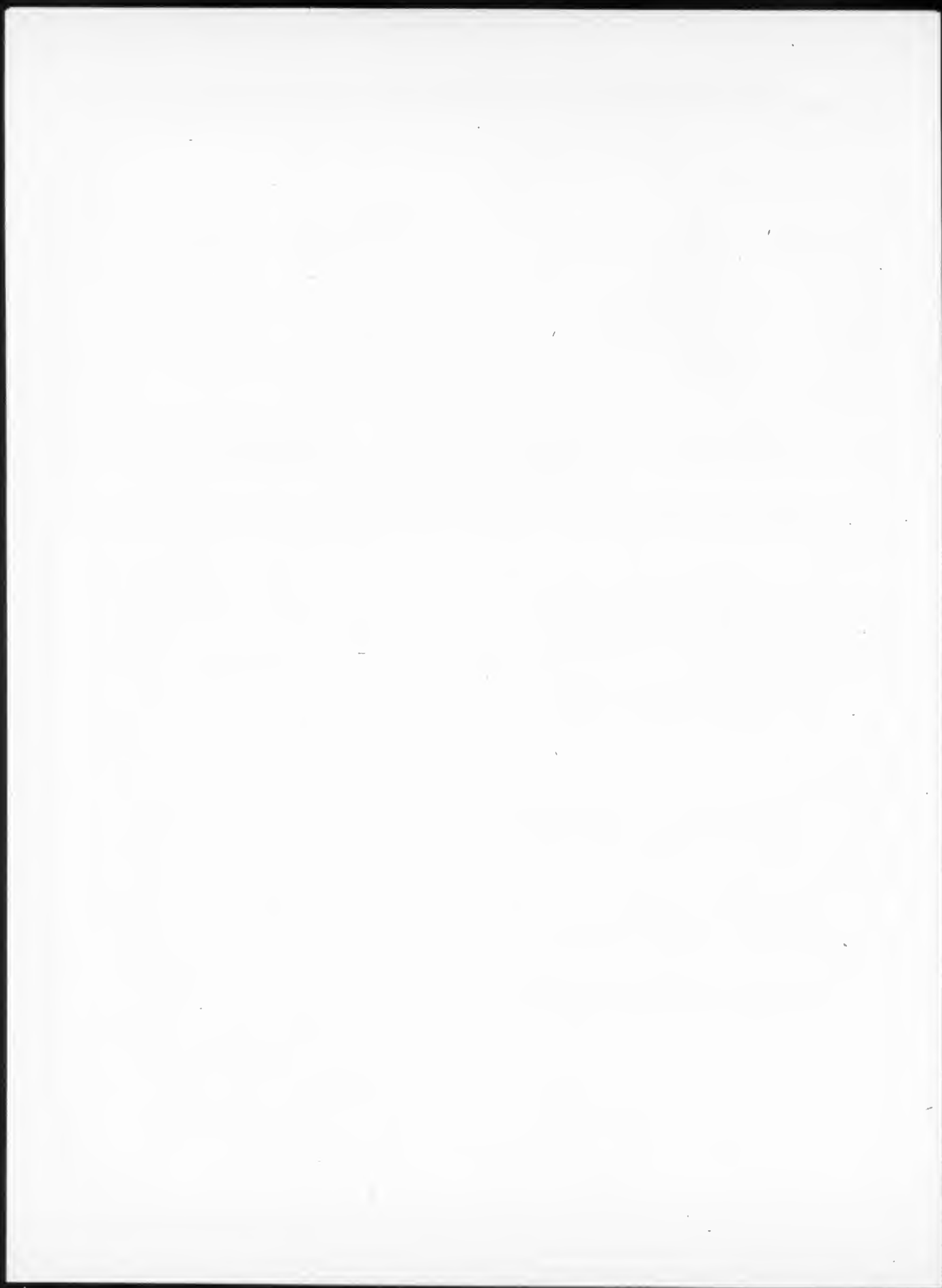
List of Public Laws**Last Listing July 30, 1979**

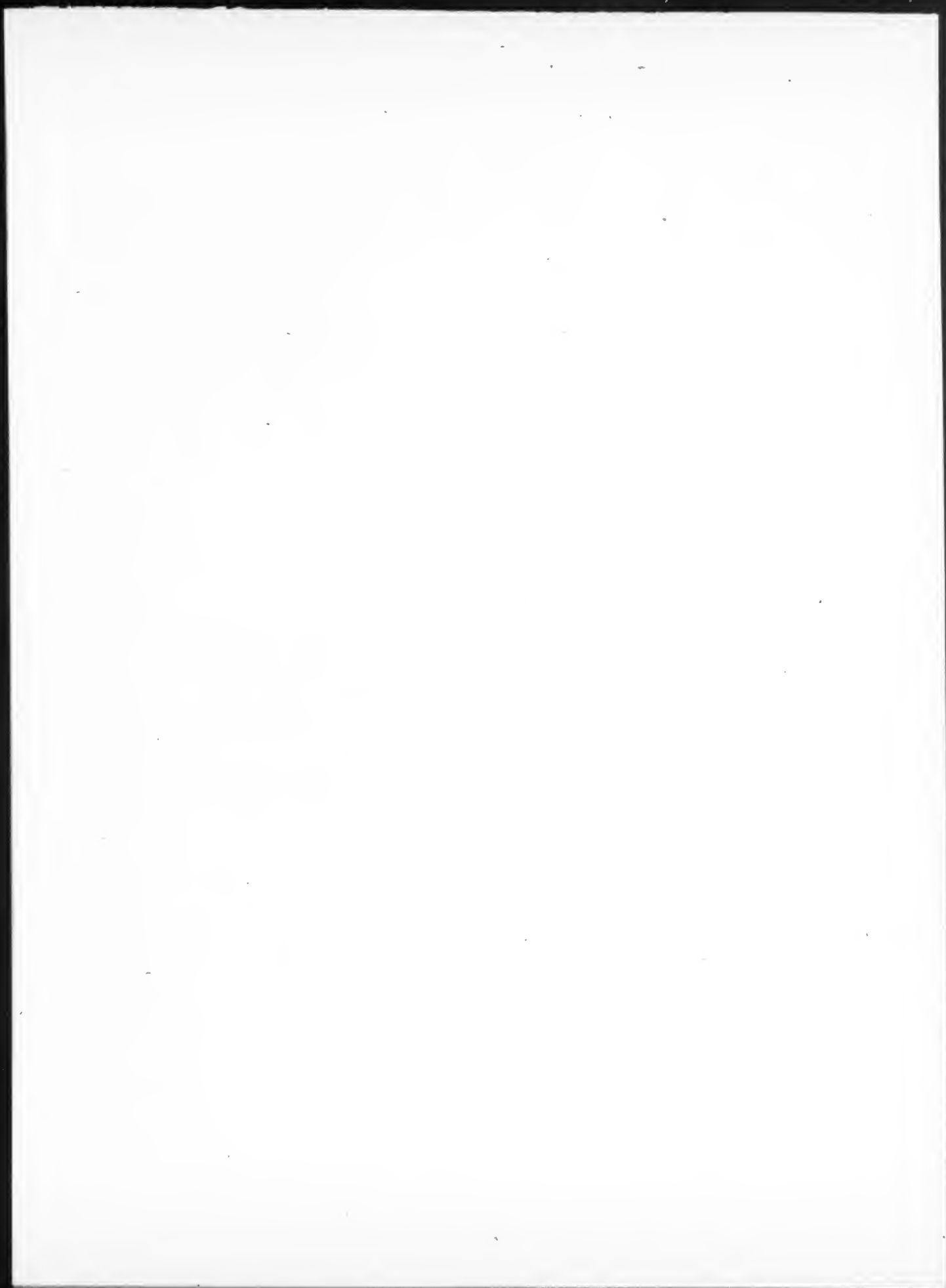
This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

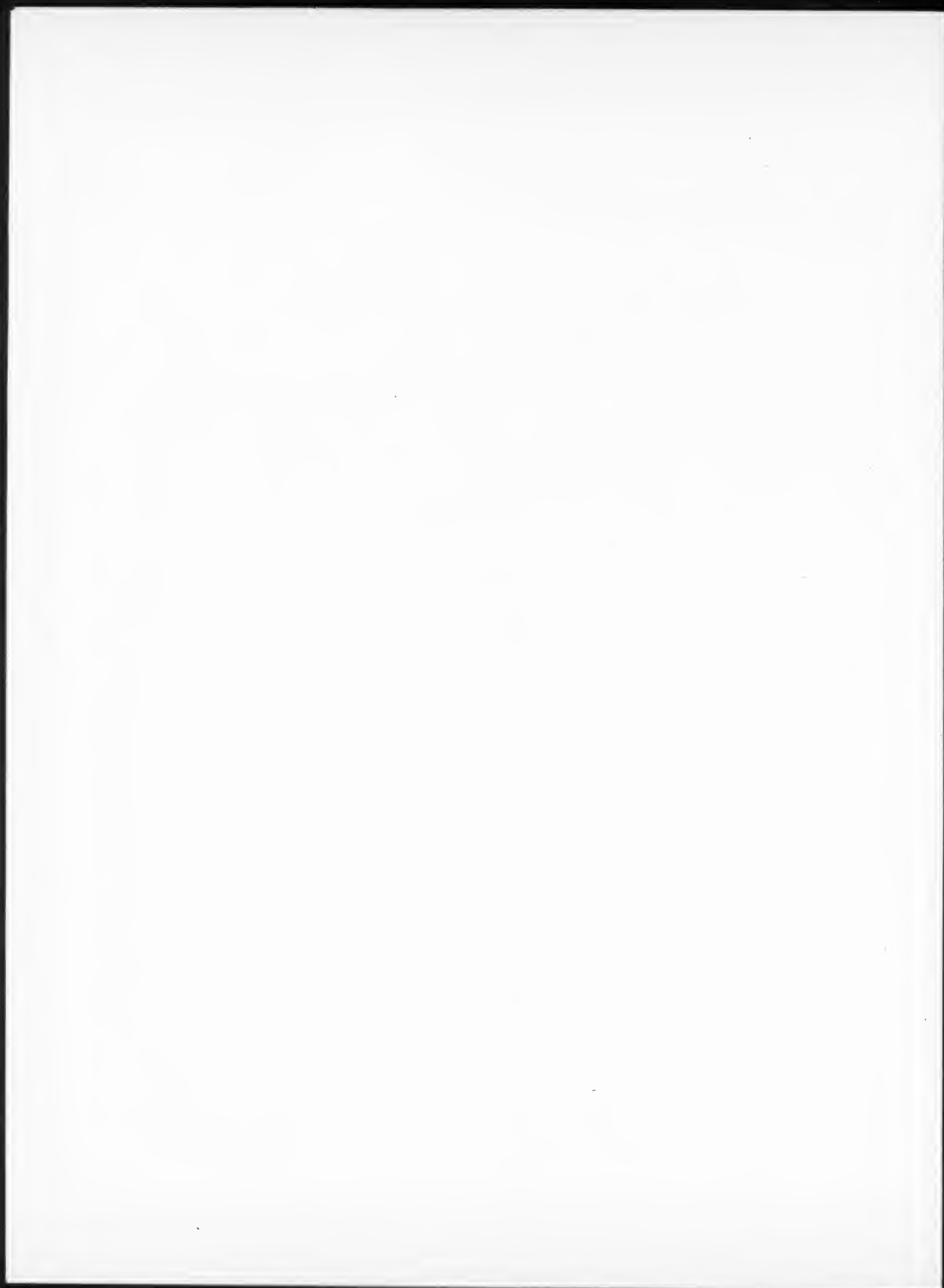
H.R. 3661 / Pub. L. 96-40 To increase the authorization of appropriations under the Act of December 22, 1974 (88 Stat. 1712). (July 30, 1979; 93 Stat. 318) Price \$.75.

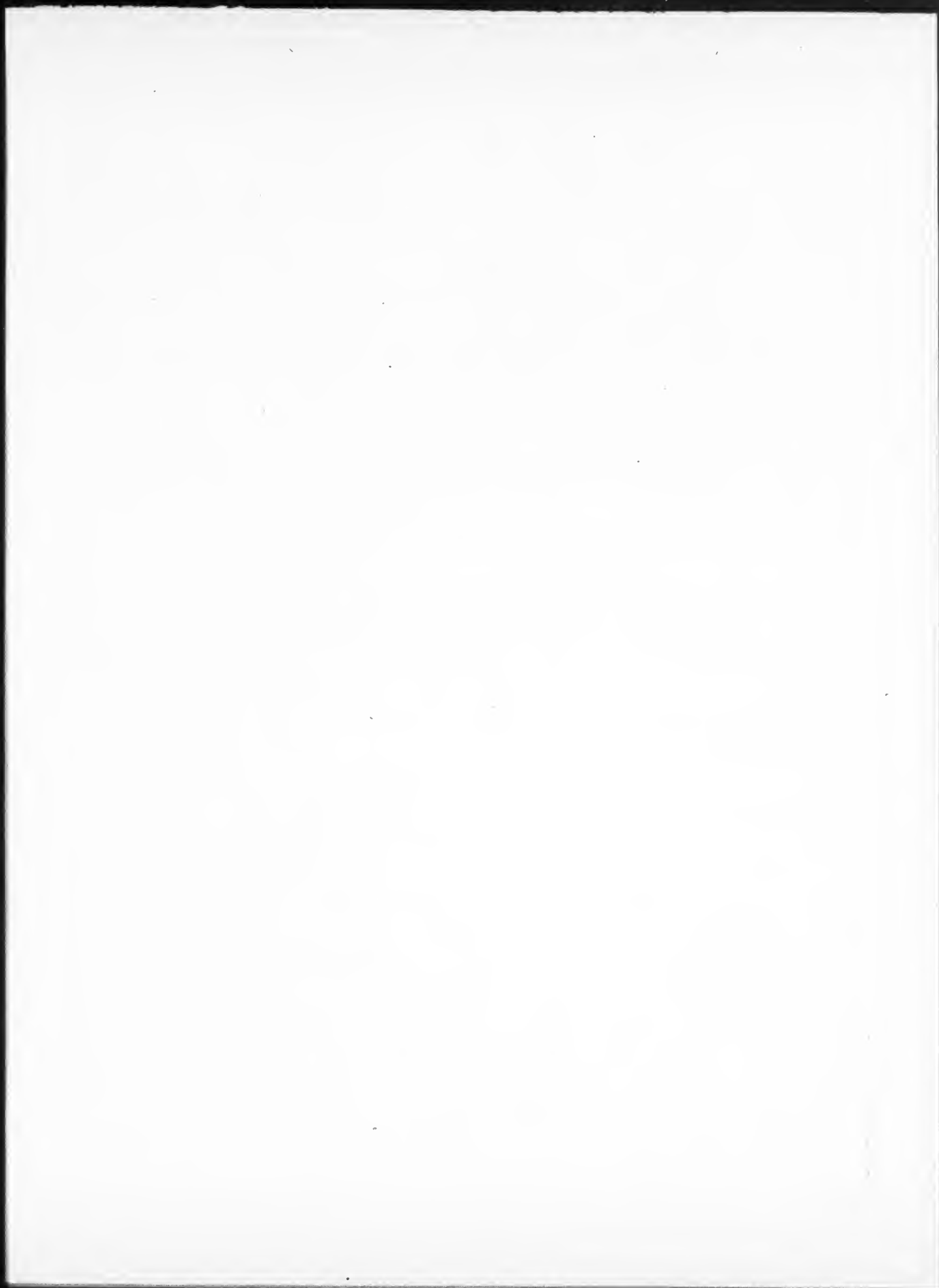
H.R. 2154 / Pub. L. 96-41 "Strategic and Critical Materials Stock Piling Revision Act of 1979". (July 30, 1979; 93 Stat. 319) Price \$.75.

H.R. 4712 / Pub. L. 96-42 To delay conditionally the effective date of certain rules of procedure and evidence proposed by the United States Supreme Court, and for other purposes. (July 31, 1979; 93 Stat. 326) Price \$.75.









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| | Title 26—Internal Revenue (Part 1, §§ 1.401-1.500) | 6.00 | |
| | Title 26—Internal Revenue (Part 1, §§ 1.851-1.1200) | 7.50 | |
| | Title 26—Internal Revenue (Part 1, §§ 1.1201-End) | 8.50 | |
| | Title 26—Internal Revenue (Parts 2-29) | 6.00 | |
| | Title 26—Internal Revenue (Parts 30-39) | 6.00 | |
| | | Total Order | \$ |

[A Cumulative checklist of CFR issuances for 1978 appears in the first issue of the Federal Register each month under Title 1. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected)]

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