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> Subtitle A - Office of the Secretary, Department of Housing and Urban Development
> PART 58 - ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES
> Subpart D - Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification
> **§ 58.34 Exempt activities.**

24 CFR § 58.34 - Exempt activities.

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§ 58.34 Exempt activities.

(a) Except for the applicable requirements of [§ 58.6](#), the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in [§ 58.5](#) for the activities exempt by this section or projects consisting solely of the following exempt activities:

- (1)** Environmental and other studies, resource identification and the development of plans and strategies;
- (2)** Information and financial services;
- (3)** Administrative and management activities;
- (4)** Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- (5)** Inspections and testing of properties for hazards or defects;
- (6)** Purchase of insurance;
- (7)** Purchase of tools;
- (8)** Engineering or design costs;
- (9)** Technical assistance and training;
- (10)** Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;
- (11)** Payment of principal and interest on loans made or obligations guaranteed by HUD;
- (12)** **Any of the categorical exclusions listed in [§ 58.35\(a\)](#)** provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in [§ 58.5](#).

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

[[61 FR 19122](#), Apr. 30, 1996, as amended at [63 FR 15271](#), Mar. 30, 1998]

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> **§ 58.35 Categorical exclusions.**

24 CFR § 58.35 - Categorical exclusions.

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§ 58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see § 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in § 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

[see list below](#)

(a) Categorical exclusions subject to § 58.5. The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in § 58.5:

(1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.

(3) Rehabilitation of buildings and improvements when the following conditions are met:

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;

(ii) In the case of multifamily residential buildings:

(A) Unit density is not changed more than 20 percent;

(B) The project does not involve changes in land use from residential to non-residential; and

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

(iii) In the case of non-residential structures, including commercial, industrial, and public buildings:

(A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and

(B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(4)

(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).

(5) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

(6) Combinations of the above activities.

(b) Categorical exclusions not subject to § 58.5. The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under § 58.6.

(1) Tenant-based rental assistance;

(2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

(4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

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

(6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under § 58.47.

(c) Circumstances requiring NEPA review. If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

(d) The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998; 68 FR 56129, Sept. 29, 2003; 78 FR 68734, Nov. 15, 2013]

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24 CFR § 58.5 - Related Federal laws and authorities.

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§ 58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in [§ 58.1\(b\)](#), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) Historic properties.

(1) The National Historic Preservation Act of 1966 ([16 U.S.C. 470 et seq.](#)), particularly sections 106 and 110 ([16 U.S.C. 470](#) and [470h-2](#)).

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 ([36 FR 8921](#)), [3 CFR 1971-1975 Comp.](#), p. 559, particularly section 2(c).

(3) Federal historic preservation regulations as follows:

(i) [36 CFR part 800](#) with respect to HUD programs other than Urban Development Action Grants (UDAG); and

(ii) [36 CFR part 801](#) with respect to UDAG.

(4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 ([16 U.S.C. 469 et seq.](#)), particularly section 3 ([16 U.S.C. 469a-1](#)).

(b) Floodplain management and wetland protection.

(1) Executive Order 11988, Floodplain Management, May 24, 1977 ([42 FR 26951](#)), [3 CFR, 1977 Comp.](#), p. 117, as interpreted in HUD regulations at [24 CFR part 55](#), particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in [24 CFR part 55](#) and this part, see [§ 55.10](#) of this subtitle A.)

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 ([42 FR 26961](#)), [3 CFR, 1977 Comp.](#), p. 121, as interpreted in HUD regulations at [24 CFR part 55](#), particularly sections 2 and 5 of the order.

(c) **Coastal Zone Management.** The Coastal Zone Management Act of 1972 ([16 U.S.C. 1451 et seq.](#)), as amended, particularly section 307(c) and (d) ([16 U.S.C. 1456\(c\)](#) and (d)).

(d) Sole source aquifers.

(1) The Safe Drinking Water Act of 1974 ([42 U.S.C. 201, 300\(f\) et seq.](#), and [21 U.S.C. 349](#)) as amended; particularly section 1424(e)([42 U.S.C. 300h-3\(e\)](#)).

(2) Sole Source Aquifers (Environmental Protection Agency - [40 CFR part 149](#)).

(e) **Endangered species.** The Endangered Species Act of 1973 ([16 U.S.C. 1531 et seq.](#)) as amended, particularly section 7 ([16 U.S.C. 1536](#)).

(f) **Wild and scenic rivers.** The Wild and Scenic Rivers Act of 1968 ([16 U.S.C. 1271 et seq.](#)) as amended, particularly section 7(b) and (c) ([16 U.S.C. 1278\(b\)](#) and (c)).

(g) Air quality.

(1) The Clean Air Act ([42 U.S.C. 7401 et seq.](#)) as amended; particularly section 176(c) and (d) ([42 U.S.C. 7506\(c\)](#) and (d)).

(2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency - 40 CFR parts 6, 51, and 93).

(h) Farmlands protection.

(1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

(2) Farmland Protection Policy (Department of Agriculture - 7 CFR part 658).

(i) HUD environmental standards.

(1) Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in § 51.303(a)(3).

(2)

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

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

(iii) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

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

(j) Environmental justice. Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003; 78 FR 68734, Nov. 15, 2013]

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