

Office of Housing and Community Partnerships Definitions of Environmental Levels

§58.34 Exempt activities.

- a) Except for the applicable requirements of Sec. 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 Sec. 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 Sec. 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in Sec. 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.

*** Except, per State of Ohio's agreement with HUD, recipients are required to submit a Certification of Exemption or a Certification of Categorically Excluded but Subsequently Exempt and receive an Acknowledgment from the State of Ohio prior to undertaking the activity.**

§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 Sec. 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 Sec. 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

- a) **Categorical exclusions subject to Sec. 58.5.** The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in Sec. 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, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland;
 - 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 Sec. 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 Sec. 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 Sec. 58.6.

** Except, per State of Ohio's agreement with HUD, recipients are required to submit a Certification of Categorically Excluded, but Not Subject to 58.5 and receive an Acknowledgment from the State of Ohio prior to undertaking the activity.*

- 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 Sec. 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.

§58.36 Environmental assessments.

If a project is not exempt or categorically excluded under Secs. 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under Sec. 58.37, the responsible entity should proceed directly to an EIS.

§58.37 Environmental impact statement determinations.

- a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.
- b) An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:
 - 1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.
 - 2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under Sec. 58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.
 - 3) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.
- c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.
- d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where Sec. 58.53 is applicable.
- e) Recommended EIS Format. The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.