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## Federal Funded Programs Environmental Checklists



# MSHDA Rental Development Division – National Environmental Policy Act (NEPA) Review FAQ

Applicants applying to MSHDA’s Rental Development Division applying for federal funds (HOME, Project Based Vouchers, Community Development Block Grant, etc.) are required to undergo the HUD environmental review process, commonly referred to as NEPA. The level of environmental review is determined by the scope and nature of proposed activities, as detailed in HUD 24 CFR Part 58.

This FAQ explains more about the environmental review process.



**The environmental review procedures cover numerous and varied considerations, and can take a significant amount of time and effort to complete. Starting EARLY is a necessity.**



## **DETERMINING THE LEVEL OF ENVIRONMENTAL REVIEW**

24 CFR Part 58 provides guidance for conducting the environmental review process. Every project requires some level of environmental review. There are five levels of environmental review to consider:

1. Exempt
2. Categorically Excluded, Not Subject To 58.5 (CENST)
3. Categorically Excluded, Subject To 58.5 (CEST)
4. Environmental Assessment (EA)
5. Environmental Impact Statement (EIS)

In general...

- Most all applications will require some level of environmental review.
- Very few applications initially qualify as being Exempt.
- Most rehab projects qualify for an initial determination as Categorically Excluded, Subject to 58.5.
- All new construction projects will require an Environmental Assessment.

### **☐ Exempt Activities (24 CFR 58.34)**

Exempt activities have no physical impact or result in no physical change on the environment. Other than documenting the level of review as Exempt, the RE does not have to comply with actions under NEPA and other provisions of laws or authorities cited in §58.5. Funds from any source may be used for Exempt activities after the finding of exemption is documented in the

review record. The following activities are Exempt under §58.34:

1. Environmental and other studies, resource identification and 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 there are no circumstances which require compliance with any other Federal laws and authorities cited in §58.5.**

□ **Categorically Excluded Activities (24 CFR 58.35) – 2 classifications**

If an activity is not determined Exempt, the Responsible Entity must determine if it is Categorically Excluded. Categorically Excluded activities are those *excluded from NEPA requirements, but may be subject to review under other Federal laws and authorities listed in 24 CFR 58.5*. There are two classifications of Categorically Excluded activities; those listed under **§58.35 (a)** and those listed under **§58.35(b)**.

**(a) 58.35(a) Categorically Excluded Activities SUBJECT TO §58.5 (CEST):**

The following activities 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:
  - a. 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;
  - b. In the case of multifamily residential buildings:
    - i. Unit density is not changed more than 20 percent;
    - ii. The project does not involve changes in land use from residential to non-residential; and
    - iii. The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
  - c. In the case of non-residential structures, including commercial, industrial and public buildings:
    - i. The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
    - ii. 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 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) 58.35(b) Categorically Excluded Activities NOT SUBJECT TO §58.5 (CENST):**

HUD has determined the following activities do not alter any conditions requiring a review of compliance determination under Federal laws and authorities cited in §58.5

- 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 buy-downs, 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.

Applications for new construction are neither Exempt nor Categorically Excluded and will require a full Environmental Assessment (24 CFR 58.36).

### **Environmental Assessment (EA) (24 CFR 58.36)**

If a project is not Exempt or Categorically Excluded, an *Environmental Assessment* is required. The purpose of the EA is to determine the significance of environmental effects and to assess alternative means to achieve an RE's objectives. Once actual and potential impacts of project alternatives are identified, the RE must then assess if mitigation measures are needed to undertake the project. It is at this point the RE is capable of determining if the project is generally feasible with the ability to identify the most suitable project alternative to meet the needs of the RE and its beneficiaries. If significant impacts are anticipated with no reasonable means of mitigation apparent, the RE may reject the project or complete an Environmental Impact Statement (EIS). In all circumstances, the EA must provide sufficient evidence and analysis for determining whether to prepare an EIS.

## **Statutory Checklist Laws and Related Authorities**

Categorically excluded projects, which include **MOST ALL** of the initial submissions to MSHDA Rental Development, must demonstrate compliance with the following federal laws and related authorities through completion of the NEPA statutory checklist. The NEPA statutory checklist must be completed by an environmental professional qualified to conduct such a review from MSHDA's Qualified Consultant List.

**Historic Properties (16 USC 470 Section 106):**

- Cover letter to SHPO
- Letter(s) to tribes
- SHPO Section 106 Project Information Form
- Attachments to Section 106 Form
- SHPO response letter(s) – always responds
- Tribal response letter(s) – may not respond
- Cultural Resource Survey, if applicable
- Memorandum of Agreement, if applicable

**Floodplain Management (EO 11988):**

- FEMA Flood Insurance Rate Map (FIRM) map or FEMA FIRMette Map w/ project keyed
- If not in floodplain, nothing more required. EA/Statutory Checklist form must be complete.
- If in floodplain, HUD 8-Step Process may be required. Engineer/architect is resource for help.

**Flood Insurance (24 CFR Part 55)** (Particularly relevant if project lies in floodplain. RE must be member in good standing with NFIP if project is in floodplain. If not in floodplain, documentation should still be attached.)

- Page(s) from FEMA Community Status Book for NFIP status
- Other:

**Wetland Protection (EO11990)** (If project is in a wetland, the HUD 8-Step Decision Making Process applies.)

- Color US Fish & Wildlife (US F&W) National Wetlands Inventory (NWI) Map
- Letter & attachments to US F&W)
- MDEQ response
- Permitting requirements, as applicable
- Other:

**Coastal Zone Management (16 USC 1451, Section 307)**

- MDEQ website; attach documentation
- Document compliance

**Airport Hazards (24 CFR Part 51, Subpart D)** - Protection of project & project beneficiaries from airport accident areas.

- Maps indicating nearest airports in relation to the project area
- If project proposed w/in thresholds of airport accident areas, HUD process that must be completed

- Endangered Species (50 CFR Part 402)** - Includes threatened and endangered plants and animals, and their habitat
  - Letter & attachments to US F&W for Federally designated species
  - Response from US F&W
  - Conditions by agencies, as applicable
  
- Wild & Scenic Rivers (16 USC 1271)** -Project impacts to designated rivers & river segments; impacts to project by rivers & river segments
  - Federally designated river- Website documentation & map river in relation to project
  
- Farmland Protection (7 CFR Part 658)** - Does project convert prime or unique farmland to other uses
  - Color aerial photograph of project area and surrounding area
  - Letter & attachments to USDA Natural Resources Conservation Services (NRCS), including Farmland Conversion Impact Rating Form AD 1006
  - All correspondence from USDA NRCS
  - Mitigation measures recommended
  
- Noise Control (24 CFR 51 Subpart B)** –Noise made by project, noise around the project, construction noise.
  - Color aerial photograph
  - Color photos of project site & surrounding area
  - Color maps showing project in relation to noise sources or sensitive noise uses
  - Field visit checklist or other form of documented site visit
  - Noise Assessment, if applicable
  - Noise attenuation measures, as appropriate
  
- Explosive & Flammable Operations (24 CFR Part 51, Subpart C)** – Hazards by the project and/or project subjected to nearby hazards
  - Field visit checklist or other form of documented site visit
  - Color photographs of project site & adjacent sites
  - Statement from fire department/fire marshal
  - Statement from local emergency management agency/individual
  - HUD Acceptable Separation Distance calculations, if applicable
  - Mitigation measures, if applicable
  
- Sole Source Aquifers (40 CFR Part 149)**
  - One in Michigan; not used.
  
- Air Quality** (Air emissions from project or project subjected to air emissions)
  - EPA designated non-attainment areas from EPA website
  - EPA/ MDEQ air permits or permitting requirements
  - Conformance with local air codes, ordinances, & standards by finished project & construction activities
    - Documentation whether project will begin a trend of poor air quality standards
    - Odors and fumes from project or impacting project
    - Radon test and results and mitigation, if applicable

- Mold contamination, inspection and report and mitigation, if applicable
- Asbestos -Under Air Quality in Statutory Checklist. EA has an Asbestos Section. Includes inspections, sampling, testing, reports, & mitigation for buildings, water/sewer pipes, boiler/plumbing wrap, interior/exterior buildings, some bridges, etc.

**Contamination & Toxic Substances (24 CFR 58 (5)(i)(2)):** Contamination by the project or impacts to the project

- MSHDA scoped Phase I Environmental Site Assessment (ESA)
- Consider contamination to/of: Groundwater, Air, Surface Water, Vapor Encroachment, Soil
- ASTM Phase II ESA, if applicable
- Response Activity Plan to MDEQ, if applicable
- BEA/Due Care to MDEQ, if applicable
- No Further Action letter, if applicable

**Environmental Justice (EO 12898)** - Last section for Statutory Checklist. Disproportionately high adverse impacts to low income & minority persons

- Planning and zoning information, if available
- Public involvement in the project (should coincide with Citizen Participation in an EA)
- Map or other documentation to show if project occurs on or near low income or minority neighborhood
- Positive and negative impacts to people by the project

## Conclusion

This document provides an overview of the “NEPA review” process. This process is required for all applications requesting federal money. Sponsors should contract for completion of this review with an environmental professional approved for conducting a NEPA review from MSDHA’s qualified consultant list<sup>1</sup>.

If you have any questions, please contact MSHDA’s Environmental Review unit.

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<sup>1</sup> [http://www.michigan.gov/mshda/0,4641,7-141-5587\\_22721---,00.html](http://www.michigan.gov/mshda/0,4641,7-141-5587_22721---,00.html)