

NEBRASKA

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DEPT. OF ECONOMIC DEVELOPMENT

Environmental Review Standard Operating Procedures

State of Nebraska CDBG-DR Program

JANUARY 2022

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1 STANDARD OPERATING PROCEDURE OVERVIEW

This document outlines the standard operating procedure (SOP) for conducting environmental review requirements for projects made available through the United States (US) Department of Housing and Urban Development's (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) funds. This SOP is administered under the supervision of the State of Nebraska's Department of Economic Development (DED).

Environmental review is required for all HUD-assisted projects, as HUD must comply with the National Environmental Policy Act (NEPA). The specific CDBG-DR programs are required to comply with the HUD environmental review requirements of 24 CFR Part 58. DED's companion document, ***NEPA Policies and Procedures***, describes the NEPA review process in more detail.

In addition to NEPA requirements, some projects may also require environmental permitting on the Federal, State, and local levels prior to and during implementation.¹

1.1 ASSOCIATED ALLOCATIONS

- Winter Storm Ulmer ([DR-4420](#))
 - In early 2019, the State of Nebraska suffered record-breaking damage from severe winter weather, straight-line winds, and its worst flooding event in 50 years, leading to a Federal major disaster declaration (DR-4420) under the Stafford Act. Damage from DR-4420 was widespread, leading to disaster declarations in 84 of the State's 93 counties (and four [4] tribal areas), with the worst damage located in the eastern part of the state.
 - HUD Most Impacted and Distressed (MID) is detailed in the Action Plan and includes Dodge, Douglas, and Sarpy counties.
 - Pursuant to the federal requirements for DR-4420, a minimum of 80% of this allocation must be invested in HUD-defined MID areas.
 - A minimum of 70% of total CDBG-DR program funds must be spent on Low-to-Moderate Income (LMI) populations.

This subsection may be updated should other allocations become available due to subsequent disaster events and/or supplemental allocations.

¹ See section 5, ***Environmental Permitting Requirements***, for more information.

2 ACRONYMS

Acronym	Meaning
AUGF	Authority to Use Grant Funds
CDBG-DR	Community Development Block Grant – Disaster Recovery
CENST	Categorically Excluded Not Subject to 24 CFR § 58.5
CEST	Categorically Excluded Subject to 24 CFR § 58.5
CFR	Code of Federal Regulations
CWA	US Clean Water Act
DED	Nebraska Department of Economic Development
DEE	Nebraska Department of Environment and Energy
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
ERR	Environmental Review Record
ESA	Environmental Site Assessment
FEMA	Federal Emergency Management Agency
FR	Federal Register
FONSI	Finding of No Significant Impact
HMGP	Hazard Mitigation Grant Program
HUD	US Department of Housing and Urban Development
LMI	Low- to-Moderate Income
MID	Most Impacted and Distressed
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NOI	Notice of Intent
NPDES	National Pollution Discharge Elimination System
PA	Public Assistance
RE	Responsible Entity

Acronym	Meaning
RROF	Request for Release of Funds
SOP	Standard Operating Procedure
US	United States

3 ENVIRONMENTAL REVIEW OF ACTION PLAN PROGRAMS

All programs funded through CDBG-DR require environmental review.² This section describes the environmental review process for each program under NEPA. DED has prepared Environmental Review Record forms for all levels of HUD NEPA review and these forms are available on DED’s website. These forms will be utilized for all of the Action Plan programs described in this section.

Compliance with NEPA and HUD regulations at 24 CFR Part 58 allow a “Responsible Entity” (RE) to assume authority to perform environmental reviews. The RE can be the State, a unit of local government, or Native American Tribe that exercises land use responsibility where the project is located. In some cases of projects conducted under the Action Plan, DED may act as the RE, and in other cases, local governments will be the RE as described herein. Some Subrecipients, such as non-profit organizations, and other Successful Applicants may not qualify as a RE but can partner with a local government organization that can perform the RE role.

3.1 INFRASTRUCTURE MATCH PROGRAM

The Infrastructure Match Program focuses on designing and implementing projects that will strengthen and build more resilient communities driven by the needs, opportunities, and strategies to mitigate future disaster impacts throughout the state. DED will implement infrastructure activities that focus on benefitting LMI populations in order to meet the overall 70% LMI benefit level applicable to the entire grant.

The funds that will be “matched” will come from two Federal Emergency Management Agency (FEMA) grant programs: 1) Public Assistance (PA) funded projects that will directly address damage caused by DR-4420 and 2) Hazard Mitigation Grant Program (HMGP) funded projects that will mitigate hazards in the counties declared under DR-4420. For projects funded under these FEMA programs, FEMA will perform its own environmental review under FEMA’s NEPA regulations. To meet HUD’s NEPA requirement, the existing FEMA environmental review can be “adopted” in accordance with the procedures outline in section 6, **Adopting Previous Environmental Reviews**. The award Subrecipient (e.g., local government entity or state agency)

² Should the needs of the State throughout the disaster recovery process change, DED may amend the Action Plan to most effectively use CDBG-DR funds.

would act as the RE, responsible for conducting these adoption procedures and maintaining the Environmental Review Record (ERR).

3.2 AFFORDABLE HOUSING CONSTRUCTION PROGRAM

DED will allocate CDBG-DR funds to increase the affordable housing supply in flood-impacted areas through the Affordable Housing Construction Program. This program will prioritize projects that address unmet needs in the HUD-defined MID areas, LMI populations, vulnerable populations, and public housing needs. Projects can either be new construction or rehabilitation.

The award Subrecipient will act as the RE, responsible for conducting environmental reviews and maintaining the ERR. Non-profit organizations and Successful Applicants that are awarded funding but do not qualify as a RE will need to partner with a local government organization that can act as the RE. All housing construction projects will be subject to NEPA review pursuant to 24 CFR § 58.5.

3.3 HOMEOWNER ASSISTANCE PROGRAM

The Homeowner Assistance Program will utilize CDBG-DR funding to provide grants for housing counseling, training, and homebuyer down payment and closing cost assistance. The program will also provide forgivable loans to LMI homeowners who lost their homes in the DR-4420 disaster and have insufficient funds from other sources to afford another moderately priced home. The program will be categorically excluded from NEPA not subject to the laws at 24 CFR § 58.5 (Categorically Excluded, not subject to Section 58.5 (CENST)). Under 24 CFR § 58.35(b)(5), CENST activities include:

“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.”

The portion of the Homeowner Assistance Program that will provide forgivable loans to LMI homeowners who lost their homes in the disaster can be categorized as “similar activities that result in the transfer of title” and fit this exclusion. If extraordinary circumstances are identified for a particular use of a loan under this program, then a higher level of environmental review may be required on a case-by-case basis. In the absence of such extraordinary circumstances, the entire program will be analyzed using the CENST format by DED acting as the RE.

3.4 PLANNING PROGRAMS

The Risk Awareness Planning Program and the Housing Resilience Planning Program will be exempt from the NEPA review in accordance with 24 CFR § 58.34(a)(1). The Risk Awareness Planning Program will target areas with risk exposure from private levees in counties that received a disaster declaration under DR-4420. The program will focus on flood hazard vulnerabilities that led to flood damage. DED has allocated CDBG-DR funds to support developing an outreach plan

for risk communication and consultation on alternative flood mitigation activities. Funds may be used to better quantify the impacts of private levees on the damage from the 2019 disaster or the potential impacts of future disasters. Additionally, funds may be utilized for risk awareness plans at both a local and regional scale. These activities are exempt under the exemption specified under 24 CFR § 58.34(a)(1) for environmental and other studies, resource identification, and the development of plans and strategies.

The Housing Resilience Planning Program will support local jurisdictions and economic development districts in developing plans for housing recovery, resilience, and affordability. The overarching goal of the program is to promote comprehensive community resilience. The program is intended to address flood vulnerabilities in counties that were declared under DR-4420. These activities are also exempt under the exemption specified under 24 CFR § 58.34(a)(1) for the development of plans and strategies.

DED forms for documenting exempt projects are available on its website as described at the beginning of section 3, **Environmental Review of Action Plan Programs**.

4 PROGRAM ADMINISTRATION

Environmental review of the administration of the CDBG-DR Program under NEPA will be performed by DED by use of the Finding of Exempt Activity form provided on the DED website.

Table 1 is a summary of environmental review requirements for the CDBG-DR Program. In addition to the NEPA review requirements specified in **Table 1**, a summary of potential environmental permitting requirements is provided in section 5, **Environmental Permitting Requirements**.

Table 1: Environmental Review for CDBG-DR Programs

CDBG-DR Program	Activity	NEPA Applicability
Administration	Grant administration and management by DED and its grant management consultant.	Administrative and management activities are exempt activities per 24 CFR § 58.34(a)(3) and excluded from NEPA review but subject to applicable requirements of 24 CFR § 58.6. 24 CFR § 58.6, including Flood Insurance, Flood Disaster Protection Act of 1973, National Flood Insurance Reform Act of 1994, Coastal Barrier Resources Act, and runway clear zone requirements apply to all projects, regardless of the level of review.

CDBG-DR Program	Activity	NEPA Applicability
		DED and its consultants will prepare appropriate environmental documents per HUD NEPA guidelines.
Infrastructure Match Program	Infrastructure projects (e.g., public facilities and improvements) partially funded by FEMA PA and HMGP in disaster-affected areas, including activity delivery costs.	<p>Environmental review under NEPA to be performed by FEMA, adopted by Subrecipients and approved by DED. These may be completed as an Environmental Assessment (EA) or Environmental Impact Statement (EIS) for individual construction projects depending on the potential for significant environmental impacts.</p> <p>DED and its consultant will review and approve environmental documents per HUD NEPA guidelines.</p> <p>NEPA review must be completed prior to Federal funds being committed or dispersed.</p>
Affordable Housing Construction Program	Affordable housing construction, reconstruction, or rehabilitation in disaster-affected areas, including activity delivery costs.	<p>Environmental review under NEPA is the responsibility of the Subrecipient (acting as RE). Some Subrecipients, such as non-profit organizations, and other Successful Applicants may not qualify as a RE but can partner with a local government organization that can perform the RE role. The NEPA environmental review will be performed by Subrecipients or others qualified to perform the RE role and approved by DED. The NEPA level of review will be determined by the project details and potential for significant environmental impacts.</p> <p>DED and its consultant will review and approve environmental documents per</p>

CDBG-DR Program	Activity	NEPA Applicability
		<p>HUD NEPA guidelines prior to submittal to DED’s Certifying Officer.</p> <p>NEPA review must be completed prior to Federal funds being committed or dispersed.</p>
Homeowner Assistance Program	<p>Provide grants for housing counseling, training, and homebuyer down payment and closing cost assistance, plus provide forgivable loans for purchase of replacement homes.</p>	<p>Under 24 CFR § 58.35(b)(5), the Homeowner Assistance Program will be categorically excluded from NEPA not subject to the laws at 24 CFR § 58.5.</p> <p>However, the program is subject to applicable requirements of 24 CFR § 58.6. 24 CFR § 58.6, including Flood Insurance, Flood Disaster Protection Act of 1973, National Flood Insurance Reform Act of 1994, Coastal Barrier Resources Act, and runway clear zone requirements apply to all projects, regardless of level of review.</p> <p>DED and its consultants will prepare appropriate environmental documents per HUD NEPA guidelines.</p>
Planning Programs	<p>The Risk Awareness Planning Program will support developing an outreach plan for risk communication and consultation on alternative flood mitigation activities.</p> <p>The Housing Resilience Planning Program will support local jurisdictions and economic development districts</p>	<p>The Risk Awareness Planning Program and the Housing Resilience Planning Program are exempt activities per 24 CFR § 58.34(a)(1) and excluded from NEPA review but subject to applicable requirements of 24 CFR § 58.6. 24 CFR § 58.6, including Flood Insurance, Flood Disaster Protection Act of 1973, National Flood Insurance Reform Act of 1994, Coastal Barrier Resources Act, and runway clear zone requirements apply to all projects, regardless of the level of review.</p>

CDBG-DR Program	Activity	NEPA Applicability
	in developing plans for housing recovery, resilience, and affordability.	<p>For the Risk Awareness Planning Program, DED and its consultants will prepare appropriate environmental documents per HUD NEPA guidelines.</p> <p>For the Housing Resilience Planning Program, DED and its consultants review and approve environmental documents per HUD NEPA guidelines.</p>

5 ENVIRONMENTAL PERMITTING REQUIREMENTS

Projects developed under CDBG-DR Programs may require environmental permitting in addition to the HUD NEPA environmental review described in section 3, **Environmental Review of Action Plan Programs** and section 4, **Program Administration**. For example, any project that requires a Nebraska state-issued permit, uses state funds, or is conducted by a state agency requires an environmental review for impacts on endangered and threatened species through the Nebraska Game and Parks Commission (see <http://outdoornebraska.gov/environmentalreview/>). DED will not be conducting in-depth reviews of state and local permitting requirements as those are the responsibility of the individual award Subrecipients and Successful Applicants; however, DED will perform a general compliance check, documenting that the Subrecipient or Successful Applicant attests they have completed environmental requirements.

Additional permits may apply depending on the location and scope of a specific project. Permitting requirements for individual projects may include:

- National Pollutant Discharge Elimination System (NPDES) construction permits for projects greater than 1 acre in area through the Nebraska Department of Environment and Energy (DEE) (US Clean Water Act [CWA] Section 402).
- CWA Section 401/404 permitting through the US Army Corps of Engineers and DEE (including potential wetland delineation) based on proximity to water.
- Endangered Species Act consultation with US Fish and Wildlife Service or Nebraska Game and Parks Commission (including potential biological surveys).
- National Historic Preservation Act (NHPA) consultation with State Historic Preservation Office (including potential cultural resources surveys).

- Native American Tribal consultation under the NHPA.
- Clean Air Act air quality permitting through the DEE. Local air permitting for construction equipment may be required.
- A Phase I Environmental Site Assessment (ESA) may be warranted to assess potential impacts from hazardous materials. Lead-based paint and asbestos surveys may also be warranted.
- HUD Noise Abatement and Control checklist and compliance with local noise ordinances.
- Consultation with the US Department of Agriculture under the Farmlands Protection Act.
- Consultation with the US Environmental Protection Agency (EPA) under the Safe Drinking Water Act.

6 ADOPTING PREVIOUS ENVIRONMENTAL REVIEWS

6.1 APPLICABILITY

The procedures for adopting previous environmental review documents are applicable for projects in any of the Action Plan programs for which a previously performed environmental review of the project occurred, or for which a current ongoing environmental review of the project is being conducted. These procedures are most likely to be used on projects under the Infrastructure Match Program, where NEPA environmental reviews will be completed by FEMA, and under the Affordable Housing Construction Program, where environmental reviews may have been performed for housing projects under different federal funding streams.

In accordance with 24 CFR § 58.14, a single EIS or EA may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

The procedures described here are intended to standardize the steps for DED's review and approval of these existing environmental documents. Although award Subrecipients³ act as the RE for performing HUD's environmental review requirements under the Infrastructure Match and Affordable Housing Construction Programs, DED has the role of checking technical appropriateness of environmental documents to help ensure the Subrecipients and Successful Applicants can withstand a HUD audit and not risk losing funding.

³ Some Subrecipients, such as non-profit organizations, and other Successful Applicants may not qualify as a RE but can partner with a local government organization that can perform the RE role.

6.2 PROCEDURES COMMON TO ALL PREVIOUS ENVIRONMENTAL REVIEW DOCUMENTS

24 CFR § 58.47 covers re-evaluation of EAs and other environmental findings. A RE must re-evaluate its environmental findings to determine if the original findings are still valid. Although DED may not be the RE for most CDBG-DR projects, it still has responsibility under its grant agreement with HUD for ensuring a sufficient level of environmental review has been completed. DED will perform a high-level review⁴ of all previous environmental documents submitted in support of a Subrecipient or Successful Applicant project's NEPA review.

The key first step is to confirm that the project actions covered by the original environmental review document and the proposed actions are the same. If different, the new document must be updated by the RE to include all the current proposed actions, describing any changes, to analyze the potential environmental impacts resulting from such changes.

The next key step is to check the date when the environmental review document was prepared. As a general guideline if the document is more than one (1) year old it should be updated to ensure site and surrounding conditions have not changed. As examples, conditions related to biological resources and hazardous materials are prone to changes. A Phase 1 ESA has a legal "expiration date" of six (6) months after completion. The level of effort for an update may be a letter certifying the results are still valid or a new report updating multiple technical areas, contingent on the changes that have occurred. The previous environmental review document shall also be reviewed for technical adequacy by qualified DED personnel or contractors. The focus of that review is to determine sufficiency for NEPA compliance and to make a recommendation for any additional work based on that sufficiency determination.

6.3 ADOPTION PROCEDURES FOR SPECIFIC SITUATIONS

6.3.1 NEPA DOCUMENT PREPARED UNDER HUD GUIDELINES FOR SAME RESPONSIBLE ENTITY

If the original environmental review document is adequate per the procedures described in section 6.2, ***Procedures Common to All Previous Environmental Review Documents***, then the Subrecipient⁵ should complete the Finding of CENST Activity form provided on DED's website to incorporate the new funding. The CENST process formalizes the review and use of the previous document. The DED file and RE's ERR should include the previously prepared environmental documents, Notice of Intent (NOI), Request for Release of Funds (RROF), Finding of No

⁴ DED's high-level review will be supported by an environmental review memo.

⁵ Some Subrecipients, such as non-profit organizations, and other Successful Applicants may not qualify as a RE but can partner with a local government organization that can perform the RE role.

Significant Impact (FONSI), if appropriate, and Authority to Use Grant Funds (AUGF) from the original issuer, plus the Finding of CENST Activity form.

6.3.2 NEPA DOCUMENT PREPARED UNDER HUD GUIDELINES FOR A DIFFERENT RESPONSIBLE ENTITY

If the original environmental review document is adequate per the procedures described in section 6.2, ***Procedures Common to All Previous Environmental Review Documents***, it can be adopted by another RE via an adoption memo. The original RE must be notified that their environmental review is being adopted⁶ by sharing the adoption memo. DED can provide an adoption memo template for completion by the new RE.

The DED file and RE's environmental review record should include the previously prepared environmental documents, NOI, RROF, FONSI (if appropriate), and AUGF from the original issuer, plus the adoption memo. A new NOI/RROF must be prepared and put out for public notice (newspaper publication)⁷ by the new RE, followed by issuance of an AUGF.

6.3.3 NEPA DOCUMENT PREPARED UNDER ANOTHER AGENCY'S GUIDELINES

In accordance with 40 CFR § 1506.3, a Federal agency (in this case HUD or the RE acting as HUD) may adopt a Federal draft or final EIS, EA, or portion thereof, or categorical exclusion determination provided that the EIS, EA, portion thereof, or determination meets the standards for an adequate EIS, EA, or determination under the regulations.

83 Federal Register (FR) 5844 at 5859 states: "In accordance with the Appropriations Act, grant recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by the [Housing and Community Development Act of 1974]. The grant recipient must notify HUD in writing of its decision to adopt another agency's environmental review. The grant recipient must retain a copy of the review in the grantee's environmental records."

If the original environmental review is adequate per the procedures described in section 6.2, ***Procedures Common to All Previous Environmental Review Documents***, then the Subrecipient⁸ can adopt the environmental document, via an adoption memo. The RE should prepare an adoption memo and prepare the NOI/RROF, followed by issuance of an AUGF.

⁶ The original RE approval is not needed.

⁷ The ***NEPA Policies and Procedures*** provide additional information regarding public notice requirements.

⁸ Some Subrecipients, such as non-profit organizations, and other Successful Applicants may not qualify as a RE but can partner with a local government organization that can perform the RE role.

There are some environmental criteria and standards that HUD requires a more in-depth analysis of than other agencies, including:

- Noise Abatement and Control, 24 CFR Part 51, Subpart B;
- Proximity to Explosives or Flammable Sites, 24 CFR Part 51, Subpart C;
- Proximity to Airport Runway Protection Zones, 24 CFR Part 51, Subpart D; and
- Proximity to Toxic Hazards, 24 CFR § 50.3(i) and § 58.5(i)(2).

If the previous environmental review document does not specifically meet HUD’s standards, then the document should be updated to address them and any other HUD impact categories.

Table 2 summarizes adoption of previous environmental documents for NEPA compliance.

Table 2: Adoption of Environmental Documents for NEPA compliance

Type of Environmental Review Document to be Adopted	DED High-level Technical Review	Documents Required	AUGF
HUD NEPA Document prepared by same Responsible Entity	<ul style="list-style-type: none"> • Prepare environmental review memo • Check project description match and document age 	<ul style="list-style-type: none"> • Previously prepared environmental documents • Finding of CENST Activity form • Utilize same NOI/FONSI/RROF • AUGF from previous funding source 	No new AUGF required if previous environmental review determined to be current and adequate.
HUD NEPA Document prepared by different Responsible Entity	<ul style="list-style-type: none"> • Prepare environmental review memo • Check project description match and document age 	<ul style="list-style-type: none"> • Previously prepared environmental documents • NOI, RROF, FONSI (if appropriate) from original issuer 	New AUGF from DED required if from a different funding source.

Type of Environmental Review Document to be Adopted	DED High-level Technical Review	Documents Required	AUGF
		<ul style="list-style-type: none"> • Adoption memo to previous RE, project file • New NOI/FONSI/RROF (public notice) • AUGF from previous funding source 	
<p>NEPA Document prepared under different Federal agency's guidelines (permissible under 40 CFR § 1506.3)</p>	<ul style="list-style-type: none"> • Prepare environmental review memo • Check project description match and document age • Confirm all HUD categories have been addressed 	<ul style="list-style-type: none"> • Previously prepared environmental documents • Adoption memo to file 	<p>AUGF from DED required for Infrastructure Match and Affordable Housing Construction Program.</p>