

8 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

8.1 POLICY OVERVIEW

Every US Department of Housing and Urban Development (HUD)-assisted project must be in compliance with the National Environmental Policy Act of 1969 (NEPA), HUD's implementing regulations at 24 CFR Part 58, and other related Federal and State environmental laws. Pursuant to 42 USC § 5304(g)(1) and 24 CFR § 58.4, the State of Nebraska assumes the responsibility for Environmental Reviews, decision-making, and actions that would otherwise be carried out by HUD under NEPA and other statutes.

There are two (2) fundamental aspects of NEPA:

- **Public Participation:** The public must be informed about the project before it begins.
- **Limitation on Activities Before Environmental Clearance:** The Responsible Entity (RE) for the project must obtain Environmental Clearance prior to proceeding with the project.

As the Grantee of Community Development Block Grant – Disaster Recovery (CDBG-DR) funds, the State of Nebraska Department of Economic Development (DED) is responsible for ensuring compliance with Environmental Review responsibilities under NEPA. REs must complete the Environmental Review prior to obligating any funds to the project, regardless of the source. This requirement also applies to projects funded with CDBG-DR-generated program income.

The purpose of this chapter is to provide an overview of NEPA and describe steps the State of Nebraska will need to take to ensure compliance with NEPA by the State and its Subrecipients and Successful Applicants. This chapter includes guidance for monitoring the activities of Subrecipients and Successful Applicants to ensure that distribution and utilization of CDBG-DR funds meet NEPA requirements. This chapter:

- Identifies State and Federal regulations governing the Environmental Review;
- Describes standards, processes, and timeline for development of Environmental Review Records (ERRs) for each project;
- Provides guidance for the State of Nebraska to monitor Subrecipient and Successful Applicant compliance with the aforementioned standards, processes, and timeline; and
- Describes citizen participation and recordkeeping processes required as part of NEPA.

These procedures will be administered under the supervision of DED. These procedures support program implementation funded by HUD's CDBG-DR awards.

State agencies and units of local government can serve as REs, responsible for certifying NEPA Environmental Reviews in accordance with 24 CFR Part 58. Other Successful Applicants and non-governmental Subrecipients, including developers and their consultants may perform Environmental Reviews; however, they must work with an eligible RE that is ultimately responsible for the content of the ERR and must make an independent evaluation of the environmental issues, take responsibility for the scope and content of the compliance findings, and make the final environmental decision concerning project approval.

8.2 REGULATION

This chapter is structured to ensure compliance with Federal regulations set forth by HUD and the State of Nebraska for the Grantee (DED), Subrecipients, and Successful Applicants of CDBG-DR funds. Key regulations guiding Environmental Review processes are described below.

Applicable HUD environmental regulations are codified at 24 CFR Part 58. 24 CFR § 58.22 prohibits the Grantee (DED), Subrecipients, and Successful Applicants from committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an Environmental Review once a project has become “Federal.” This prohibition on “choice-limiting actions” prohibits physical activity, including acquisition, rehabilitation, construction, and contracting for or committing to any of these actions prior to completion of the Environmental Review. It is therefore required that environmental information be made available *before* decisions are made and *before* actions are taken.

NEPA, as implemented by the Council on Environmental Quality (CEQ) via regulations at 40 CFR Parts 1500 to 1508, requires that Environmental Reviews be conducted such that the following requirements are met:

- Non-commitment of either public or private funds, including CDBG-DR, or execution of a legally binding agreement for property acquisition, rehabilitation, conversion, repair, or construction pertaining to a specific site until environmental clearance has been achieved;
- Avoid choice-limiting actions that preclude selection of alternatives before a final decision is made, that decision being based upon an understanding of the environmental consequences and actions that can protect, restore, and enhance the human environment (i.e., the natural, physical, social, and economic environment);
- No activities that have physical impacts or that limit the choice of alternatives prior to obtaining environmental clearance as evidenced by the Authority to Use Grant Funds (AUGF); and
- For the purposes of the CDBG-DR Environmental Review process, “commitment of funds” includes:
 - Execution of a legally binding agreement, such as a property purchase or construction contract for a project or activity using CDBG-DR;

- Expenditure of CDBG-DR funds;
- Use of non-CDBG-DR funds on actions that would have an adverse impact (e.g., demolition, dredging, filling, excavating); and
- Use of non-CDBG-DR funds on actions that would be “choice-limiting” (e.g., acquisition of real property; leasing property; rehabilitating, demolishing, constructing, or relocating buildings or structures; and conversion of land or buildings/structures).

8.3 ROLES AND RESPONSIBILITIES

HUD regulations at 24 CFR Part 58 allow a RE to assume authority to perform Environmental Reviews. The RE can be the State, a unit of local government, or Tribe that exercises land use responsibility where the project is located. The first step in determining the roles and responsibilities is to determine which entity is the RE for that project. The RE is responsible for ensuring compliance with NEPA and the related Federal laws and authorities, for issuing the public notification, for submitting the RROF and certification, when required, and for ensuring the ERR is complete. In order to fulfill its obligations under 24 CFR Part 58, the RE should designate two (2) responsible parties, the Certifying Officer (CO) and the Environmental Officer.

The Action Plan also requires that the Subrecipient and Successful Applicant comply with State of Nebraska environmental rules and regulations. An overview of roles and responsibilities in performing an Environmental Review under HUD NEPA Guidelines per 24 CFR Part 58 is provided as **Table 1**.

Table 1: NEPA Roles and Responsibilities

Role	Key Responsibilities
DED*	<ul style="list-style-type: none"> • Ensure that the RE has identified a CO. • Approve the ERR as prepared and certified by RE.
Responsible Entity	<ul style="list-style-type: none"> • Identify CO. • CO is responsible for: <ul style="list-style-type: none"> ○ Reviewing and approving the ERR¹ and ○ Is authorized to execute the RROF and associated Certifications. • Identify an Environmental Officer responsible for performing (or overseeing) the project Environmental Review. • REs are responsible for obtaining permit approval, if necessary, to satisfy related environmental requirements.

* or HUD for programs where DED is acting as the RE.

8.4 ENVIRONMENTAL REVIEW

The purpose of the Environmental Review process is to analyze the effect a proposed project will have on the people and the natural environment within a designated project area and the effect the material and social environment may have on a project.

8.4.1 ENVIRONMENTAL REVIEW RECORD

The RE must prepare and maintain a written record of Environmental Review undertaken for each project to be assisted with CDBG-DR funds. The written record is referred to as the ERR. It is recommended that the Environmental Review process begin once the activity for a project is determined to be eligible and meet a National Objective pursuant to 24 CFR § 570.201 and 24 CFR § 570.208. The ERR will vary in length and content depending upon the level of review required for the categories of activities.

Per NEPA (and its implementing regulations in 40 CFR Parts 1500 to 1508) and 24 CFR Part 58, DED is required to ensure that environmental information is available before decisions are made and before actions are taken. In order to achieve this objective, 24 CFR Part 58 prohibits the

¹ This responsibility includes requirements of NEPA section 102, related provisions in 40 CFR Parts 1500 to 1508, and 24 CFR Part 58, including the related Federal authorities.

commitment or expenditure of Federal and non-Federal funds until the Environmental Review process has been completed.

To begin the Environmental Review process, the RE must determine the environmental classification of the project. The term “project” can be defined as an activity or group of activities geographically, functionally, or integrally related, regardless of funding source, to be undertaken by the Subrecipient or Successful Applicant. **If various project activities have different classifications, the RE must follow the review steps required for the most stringent classification.** To identify the Determination of Level of Review (DLR), the Subrecipient or Successful Applicant must first develop a good project description.

A project description is the foundation for the ERR, including the subsequent DLR, and for informing the public about the project. It is also the basis for monitoring compliance by DED and HUD.² Depending on the CDBG-DR program, Applicants for funding may be required to submit a project description and/or a complete ERR with their application. If applicable, this information would be detailed in the program guidelines and materials.

Regardless of the number of activities associated with a project, a single Environmental Review is required. Aggregating related activities ensures the RE adequately addresses and analyzes the separate and combined impacts of a proposed project.

Project aggregation (grouping “like” activities) in accordance with 24 CFR § 58.32 may be necessary and may require a tiered Environmental Review approach. Conditions under which project aggregation can occur include:

- Activities are in a concentrated area;
- Activities are within unspecified sites;
- Multi-year activities; or
- Special HUD initiatives.

In project aggregation, all of the individual activities that are related must be grouped together and evaluated as a single project. They may be related *geographically* or *functionally* or be logical parts of a group of contemplated actions (see **Table 2** below).

² For example, if funds are used for an activity not included in the project description, it could be a violation. Poor project descriptions can lead to failure to inform the public, incorrect level of Environmental Review, incorrect Environmental Review determinations leading to violations and sanctions, project activities being left out of review, requiring additional Environmental Review, and monitoring findings.

Table 2: Project Aggregation

	Description	Example
Location-based	<i>Geographically aggregated</i> or aggregated based on a set of contemplated actions to evaluate a range of activities occurring at a single location.	<ul style="list-style-type: none"> • New construction of an affordable housing apartment complex. • Three (3) phase development of a regional sewer system.
Activity-based	<i>Functionally aggregated</i> based on a discrete set of activities.	<ul style="list-style-type: none"> • Renter-occupied rehabilitation at scattered sites throughout a city. • Multi-year programmatic activities.

The RE should ensure that the record:

- **Describes** the project and each of the activities comprising the project, regardless of individual activity funding source;
- **Evaluates** the effects of the project or the activities on the human environment;
- **Documents** compliance with applicable statutes and authorities;
- **Documents** any site-specific reviews, as applicable for a Tiered Environmental Review; and
- **Records** the written determinations and other review findings required by 24 CFR Part 58. An overview of the necessary elements that must be included in the ERR is provided as **Table 3**. The State will ensure the RE has included the following when reviewing ERRs.

Table 3: Elements Required in an ERR

Elements Required in ERR	
Project Description	
1	<p>The description of all activities that are part of the project. The project description includes:</p> <ul style="list-style-type: none"> • HUD’s Action (e.g., providing a grant, loan, etc.). • Amount of HUD funds. This can be the estimated or anticipated amount based on the application for funding. • Location-specific information and geographic boundaries. Describe so the public can locate the proposed project (e.g., street address or map coordinates). • Purpose and Need for project. Describe what is being done and why it is necessary. RE may reference the program description here. • Project beneficiaries (i.e., affordable housing project, mixed-use housing project, etc.). • Activity description, including a delineation of all activities included in the scope of the project. Provide complete details about what will be done. <ul style="list-style-type: none"> ○ Type of project (e.g., new construction of multifamily housing). ○ Details of aggregated project. ○ Timeframe for implementation. ○ Size of the project (e.g., area coverage, disturbance footprint, number of units, population served, etc.). • Area Setting, including character, features, resources, and, in the absence of the proposed project, trends likely. • All other funding sources, if any. • All development partners, if any. <p>Other considerations for writing a good project description:</p> <ul style="list-style-type: none"> • Provide the maximum anticipated scope of the proposal, not just a single activity that the money is going toward. It should include all contemplated actions that are part of the project. Activities should be aggregated according to the regulations at 24 CFR § 58.32, which says that an RE must group together and evaluate as a single project all individual activities that are related either on the geographical or functional basis or both, or are logical parts of a composite of contemplated actions. • Description may not be identical to the description of the project and activities used by the funding program, as the project description in the Environmental Review may consider activities not financed by HUD. • If the project or Environmental Review contains information that can be considered sensitive, such as the location of a domestic violence shelter,

Elements Required in ERR	
	sacred site, or endangered species habitat, that information is omitted from the publicly reviewable ERR.
Determination of Level of Review (DLR)	
2	DLR or other form supplied by DED documents the level of review based on the HUD regulations found at 24 CFR Part 58. A copy of the DLR form is available on DED's website.
Evaluation	
3	<p>An evaluation of the effects of the project on the human environment and vice versa and record of written determinations and other review findings required by 24 CFR Part 58 as evidence of review, decision-making, and actions pertaining to a particular project, this includes:</p> <ul style="list-style-type: none"> • Documentation of compliance with applicable statutes and authorities, including the applicable NEPA Statutory Checklist or other form(s) supplied by DED;³ • All the applicable supplemental Environmental Review documents, this includes documentation of site reviews, letters to and from agencies, 8-step process, other supporting documentation, etc.; and • Documentation of any mitigation actions, if required.⁴
Documentation of Public Participation	
4	<p>Public comments, concerns, and appropriate resolution by the RE.</p> <p>Public Notices and proof of their publication, including documentation of the RE's conformance with timing requirements of any published or posted public notices and associated comment period.</p>
Certification of Continued Environmental Compliance	
5	As applicable, a Certification of Continued Environmental Compliance, HUD Form 7015.15 (RROF/Certification), Finding of Exempt Activity, or other form(s) required by DED.

The ERR must be made available for public review upon request during the public comment period established under the program and upon finalization. The RE should start to establish the record as soon as the activity is approved by HUD or DED (depending on the specific CDBG-DR

³ ERR forms are available on DED's website.

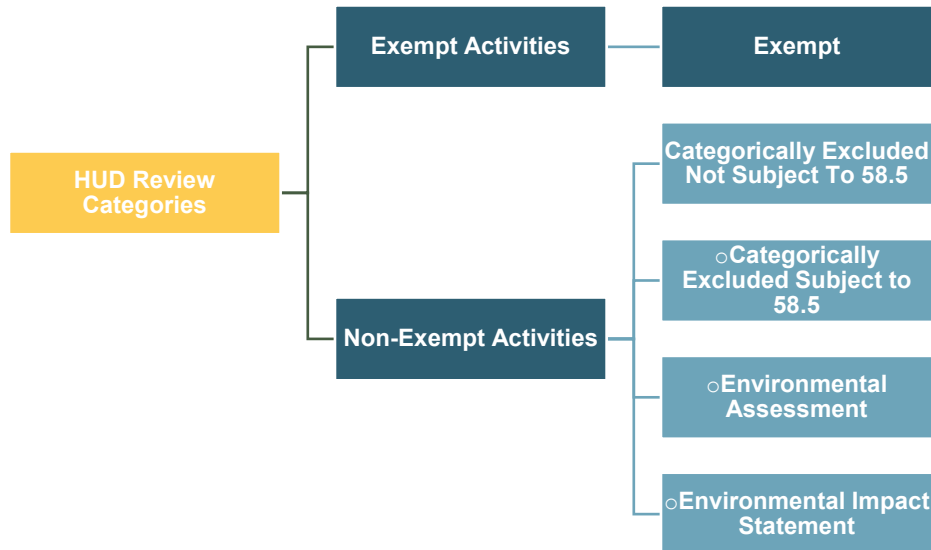
⁴ Mitigation documentation may not be available until after the project begins.

program). Public comments, concerns, and appropriate resolution by the RE are extremely important and must be fully documented in the ERR.

8.5 DETERMINE NECESSARY LEVEL OF REVIEW

8.5.1 HUD REVIEW CATEGORIES

Project activities fall into one of the below Environmental Review categories:



All Environmental Reviews, including Exempt and CENST to 24 CFR § 58.5, must comply with the laws and authorities of 24 CFR § 58.6, which includes reference to:

1. Airport Hazards, 24 CFR Part 51, Subpart D;
2. Coastal Barrier Resources Act (not applicable to Nebraska); and
3. Flood Insurance, Flood Disaster Protection Act of 1973, and National Flood Insurance Reform Act of 1994.

Higher level reviews (i.e., CEST 24 CFR § 58.5, Environmental Assessments (EAs), and Environmental Impact Statements (EISs)) also must comply with the laws and authorities referenced in 24 CFR § 58.5, including:

1. Air Quality according to the Clean Air Act (1970), as amended, particularly section 176(c) and (d); 40 CFR Parts 6, 51, 93;
2. Coastal Zone Management Act (not applicable to Nebraska);
3. Contamination and Toxic Substances according to 24 CFR § 50.3(i) and 24 CFR § 58.5(i)(2);

4. Endangered Species according to the Endangered Species Act of 1973, particularly section 7, and 50 CFR Part 402;
5. Explosive and Flammable Hazards according to 24 CFR Part 51, Subpart C;
6. Farmland Protection according to the Farmland Protection Policy Act (1981), particularly sections 1540(b) and 1541 and Farmland Protection Policy (7 CFR Part 658);
7. Floodplain Management according to the Floodplain Management EO 11988;
8. Historic Preservation according to the National Historic Preservation Act (1966), particularly sections 106 and 110, and 36 CFR Part 800;
9. The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974, particularly section 3;
10. Executive Order 11593, Protection and Enhancement of the Cultural Environment;
11. Noise and Abatement according to the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978, and 24 CFR Part 51, Subpart B;
12. Sole Source Aquifers according to the Safe Drinking Water Act of 1974, as amended, particularly section 1424(e), and 40 CFR Part 149;
13. Wetlands Protection according to the Wetlands Protection EO 11990;
14. Wild and Scenic Rivers according to the Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c); and
15. Environmental Justice according to the Environmental Justice EO 12898.

8.6 EXEMPT ACTIVITIES

8.6.1 HUD EXEMPT ACTIVITIES

HUD exempt activities are not subject to NEPA or 24 CFR Part 58, except for the applicable requirements of 24 CFR § 58.6. These activities are highly unlikely to have any direct impact on the environment. A list of activities that are considered exempt can be found at 24 CFR § 58.34(a). These include, but are not limited to, the following:

- Environmental and other studies;
- Information and financial services;
- Administrative and management activities;
- Engineering and design costs;

- Interim assistance (emergency) activities, if the assisted activities do not alter environmental conditions, and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of disasters or imminent threats to public safety or those resulting from physical deterioration;
- Public service activities that will not have a physical impact or result in any physical changes;
- Inspections and testing of properties for hazards or defects;
- Purchase of tools or insurance;
- Technical assistance or training;
- Payment of principal and interest on loans made or guaranteed by HUD; and
- Any of the categorically excluded activities subject to 24 CFR § 58.5 (as listed in 24 CFR § 58.35(a)), provided there are no circumstances that require compliance with any other Federal laws and authorities listed at 24 CFR § 58.5 of the regulations. Refer to the section below on categorically excluded activities subject to 24 CFR § 58.5.

8.6.2 HUD PROCEDURES FOR EXEMPT ACTIVITIES

DED is required to document in writing that the project is exempt and must ensure that the Subrecipient or Successful Applicant conducts the steps outlined in **Table 4**. A template for documenting compliance with 24 CFR § 58.6 is provided in the [Finding of Exempt Activity \[24 CFR § 58.34\(a\)\] Template](#).

Table 4: HUD Procedures for Exempt Activities

HUD Procedures for Exempt Activities	
1	<p>Create and record in the ERR that the activity meets the conditions for exemption per 24 CFR § 58.34. The certification should include:</p> <ul style="list-style-type: none"> • A description of the activity/project; • A citation of the applicable subsection of 24 CFR § 58.34(a); and • Documentation of total estimated activity/project cost.
2	<p>Determine and document in the ERR whether the activity triggers any of the other requirements of 24 CFR § 58.6, which are:</p> <ul style="list-style-type: none"> • The Flood Disaster Protection Act; • The Coastal Barriers Resources Act; and • The requirements for disclosure of properties located in airport runway clear zones (further described in Section 8.5.1: HUD Review Categories above).
3	No RROF is needed.

8.7 NON-EXEMPT ACTIVITIES

8.7.1 CATEGORICALLY EXCLUDED AND SUBJECT TO 24 CFR § 58.5 COMPLIANCE

The following activities are categorically excluded from NEPA regulations but **are subject** to the regulations of 24 CFR § 58.5, per the list at 24 CFR § 58.35(a):

- 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%;
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and their accessibility to elderly and handicapped persons;
- Rehabilitation of buildings and improvements when the following conditions are met:
 - For residential properties with one (1) to four (4) units, if:
 - The density is not increased beyond four (4) units; and
 - The land use is not changed.

- For multi-family residential buildings (with more than four [4] units), if:
 - Unit density is not changed more than 20%;
 - The project does not involve changes in land use from residential to non-residential; and
 - The estimated cost of rehabilitation is less than 75% of the total estimated replacement cost after rehabilitation.
- For non-residential structures including commercial, industrial, and public buildings, if:
 - The facilities and improvements are in place and will not be changed in size or capacity by more than 20%; and
 - The activity does not involve a change in land use, e.g., from commercial to industrial, from non-residential to residential, or from one industrial use to another.
- Individual Actions:
 - “Individual action” refers to new construction, development, demolition, acquisition, disposition, or refinancing (does not include rehabilitation which is covered previously).
 - An individual action on up to four (4) family dwellings where there is a maximum of four (4) units on any one (1) site. The units can be four (4) one-unit buildings or one (1) four-unit building or any combination in between.
 - An individual action on a project of five (5) 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 (4) housing units on any one (1) site.
- Acquisition (including leasing) or disposition of, 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; and
- Any combinations of the above activities.

For projects that fall within the “CEST” category, additional documentation is required. A template for documenting compliance is provided in the ***NEPA Statutory Checklist Form for Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 Template.***

8.7.2 CATEGORICALLY EXCLUDED, NOT SUBJECT TO 24 CFR § 58.5 COMPLIANCE

The following activities, listed at 24 CFR § 58.35(b), have been determined to be categorically excluded from NEPA requirements and are **not** subject to 24 CFR § 58.5 compliance determinations.

- Tenant-based rental assistance;
- 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;
- Operating costs, including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs;
- 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;
- Activities to assist homebuyers with purchasing existing dwelling units or dwelling units under construction such as closing costs, down payment assistance, interest buy-downs, and similar activities that result in the transfer of title to a property;
- Affordable housing predevelopment 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 that do not have a physical impact; and
- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under 24 CFR Part 58, if the approval is made by the same RE that conducted the Environmental Review on the original project and re-evaluation of the environmental findings is not required under 24 CFR § 58.47.

For projects that fall within the “CENST” category, documentation is required. A template for documenting compliance is provided in the ***Finding of Categorical Exclusion, Not Subject to Related Federal Statutes and Authorities [24 CFR § 58.35(b)] Template***.

8.7.3 TIERED ENVIRONMENTAL REVIEW

Tiered reviews are broad-level, programmatic reviews intended to make the Environmental Review process more efficient by eliminating repetitive discussions of the same topics that are unlikely to have significant environmental impacts. A tiered review consists of two (2) stages: a broad-level review (Tier 1) and subsequent site-specific reviews (Tier 2).

The broad-level review should identify and evaluate the issues that can be fully addressed and resolved, notwithstanding possible limited knowledge of the project. In addition, it must establish the standards, constraints, and processes to be followed in the site-specific reviews.

As individual sites are selected for review, the site-specific reviews evaluate the remaining issues based on the policies established in the broad-level review. Together, the broad-level review and all site-specific reviews will collectively comprise a complete Environmental Review addressing all required elements. Funds cannot be spent or committed on a specific site or activity until both the broad-level review and the site-specific review have been completed for the site.

Under Tier 1 (broad-level review), the RE must follow the steps defined in **Table 5**. DED will ensure they are conducted when reviewing Subrecipient and Successful Applicant compliance.

Table 5: Procedures for Tier 1 Environmental Review

Number	Procedures for Tier 1 Environmental Review
1	Create and file in the ERR written documentation of the determination to conduct a tiered review. The documentation should include:
	<ul style="list-style-type: none"> • A description of the activity/project.
	<ul style="list-style-type: none"> • A citation of the applicable subsection of 24 CFR § 58.35(a).
	<ul style="list-style-type: none"> • Documentation of total estimated activity/project cost.
2	Complete NEPA Statutory Checklist (e.g., CEST or EA forms in the <u>NEPA Statutory Checklist Form for Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 Template</u> and the <u>Environmental Assessment for HUD-funded Projects Template</u>).
3	Determine and document in the ERR if there are any circumstances that require compliance with any other Federal laws and authorities, as cited in 24 CFR Part 58.
4	Consult with the necessary regulatory agencies.
5	If it is determined that compliance with other environmental laws and regulations is necessary, then proceed with the following in advance of the Tier 2 site-specific review steps in Table 6 :
	<p>a Create Notice of Intent to Request for Release of Funds (NOI/RROF).</p>
	<p>b Publish or post NOI/RROF for public review:</p> <ul style="list-style-type: none"> • Should be available for a minimum of seven (7) days if published and 10 days if posted/mailed. • All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the RROF, then the activity/project must be re-evaluated accordingly.
	<p>c After conclusion of the public comment period and incorporation of comments, the RE sends the RROF and proof of public notice to HUD or</p>

Number	Procedures for Tier 1 Environmental Review
	DED. DED will submit RROFs to HUD through HEROS. ⁵ Subrecipients and Successful Applicants will submit RROFs to DED.
d	A 15-day period commences for HUD or DED to receive objections to the release of funds.
e	HUD or DED issues authority to use grant funds and Environmental Review is complete.
f	It may also be possible that significant environmental impact is identified and additional steps for compliance with NEPA will be evoked.

Under Tier 2 (site-specific review), the RE must conduct the steps defined in **Table 6**. DED will ensure the following has been conducted when reviewing Subrecipient and Successful Applicant compliance.

Table 6: Procedures for Tier 2 Environmental Review

Number	Procedures for Tier 2 Environmental Review
1	<p>Create and record in the ERR written documentation that the activity addresses the issues that were not resolved in the broad-level review. The documentation should include:</p> <ul style="list-style-type: none"> • A description of the activity/project. • A citation of the applicable subsection of 24 CFR § 58.35(a). • Documentation of total estimated activity/project cost.
2	Determine and document in the ERR environmental compliance measures for the NEPA categories that were not resolved in the Tier 1 review. This should include documentation of site-specific project review, including results of research and site inspections (including photographs).
3	No RROF is needed if it is determined that there are no extraordinary circumstances which would require completion of an EA or EIS, and that the project can remain CEST 24 CFR § 58.5.

⁵ HUD has directed that, effective December 31, 2021, DED is required to enter the environmental review into HUD Environmental Review Online System (“HEROS”) and submit all RROF forms via HEROS to HUD for review.

8.8 ENVIRONMENTAL ASSESSMENT AND IMPACT STATEMENT

An EA level of review, required for compliance with NEPA and 24 CFR Part 58, is applicable to all projects for activities not covered under a categorical exclusion or an exemption. This also applies when extraordinary circumstances exist that elevate the level of review. EAs are conducted to determine whether a project requires an EIS or a Finding of No Significant Impact (FONSI). A template for an EA in the format recommended by HUD can be found in the [Environmental Assessment for HUD-funded Projects Template](#).

The EA requires evaluation of all the HUD NEPA environmental impact categories listed in **Section 8.5.1: HUD Review Categories**, which are evaluated under a CEST review. Another component of the EA is an analysis of the project's impacts on land development, socioeconomic factors, community facilities and services, natural features, and climate and energy, known as the "EA Factors." Subrecipients and Successful Applicants must ensure that reliable documentation sources are cited for every item on the EA form.

Once the EA has been completed, including consultation with applicable agencies and persons, the RE must determine whether the project will or will not have a significant impact on the environment. This can be done once the review is complete and any comments have been addressed appropriately. The RE must select one of the following two findings/determinations:

- The project is not an action that significantly affects the quality of the human environment and, therefore, does not require the preparation of an EIS; or
- The project is an action that significantly affects the quality of the human environment and, therefore, requires the preparation of an EIS. Both the finding and the EA must be signed by the CO and included in the ERR.

An EIS is a detailed written statement required by Section 102(2)(c) of NEPA for a proposed major Federal action that significantly affects the quality of the human environment. An EIS is required for compliance with NEPA and 24 CFR § 58.37 under the following circumstances:

- An EA concludes a Finding of Significant Impact;
- The complexity of the project exceeds the scope of an EA;
- Extraordinary circumstances exist and elevate the review;
- Noise levels exceed into what is considered the unacceptable noise zone; or
- Project includes 2,500 or more housing units or beds.⁶

⁶ See 24 CFR § 58.37 for additional information.

An EIS should be a detailed analysis and document the environmental impacts of the proposed project. HUD does not provide a template for an EIS but does provide a recommended format and several examples of previous EIS reports on its HUD Exchange website.

The RE 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.

8.9 ENVIRONMENTAL REVIEW PROCEDURES SUMMARY

The RE must conduct the steps defined in **Table 7** for projects that are neither exempt nor categorically excluded (under either category). DED will ensure they are conducted when reviewing Subrecipient and Successful Applicant compliance.

Table 7: Procedures for HUD NEPA Environmental Review

Number	Procedures for HUD NEPA Environmental Review
1	Complete NEPA Statutory Checklist (see <u>NEPA Statutory Checklist Form for Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 Template</u>). The statutory checklist documents compliance with both the CEST and portions of the EA levels of review.
2	Complete NEPA Environmental Assessment Checklist form (see <u>Environmental Assessment for HUD-funded Projects Template</u>).
	Determination of Significant Impact:
3	If a FONSI is made to a Subrecipient or Successful Applicant RE:
	Publish or post the NOI/RROF and notice of FONSI for public review (see <u>Sample Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds</u>).
	<ul style="list-style-type: none"> <li data-bbox="477 1520 1425 1598">• Must be available for a minimum of 15 days if published and 18 days if posted/mailed. <li data-bbox="477 1608 1425 1759">• All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the FONSI/RROF, then the activity/project must be re-evaluated accordingly. <li data-bbox="477 1770 1425 1841">• After conclusion of public comment period and incorporation of comments, the RE sends the RROF and proof of public notice to DED.

Number	Procedures for HUD NEPA Environmental Review	
		<ul style="list-style-type: none"> • A 15-day period commences for DED to receive objections to the release of funds.
		<ul style="list-style-type: none"> • DED issues authority to use grant funds and the Environmental Review is complete.
	If a FONSI is made to DED as the RE:	
	b	<ul style="list-style-type: none"> • Must be available for a minimum of 15 days if published and 18 days if posted/mailed.
		<ul style="list-style-type: none"> • All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the FONSI/RROF, then the activity/project must be re-evaluated accordingly.
<ul style="list-style-type: none"> • After conclusion of public comment period and incorporation of comments, the RE sends the RROF and proof of public notice to HUD. 		
<ul style="list-style-type: none"> • A 15-day period commences for HUD to receive objections to the release of funds. 		
	<ul style="list-style-type: none"> • HUD issues authority to use grant funds and the Environmental Review is complete. 	
Finding of Significant Impact and Environmental Impact Statement		
4	If a Finding of Significant Impact is made:	
	a	An EIS details the RE’s final analyses and conclusions, related to potential significant environmental impact of the project. REs must follow prescribed steps in the course of preparing, filing, and reviewing an EIS (See 24 CFR Part 58, Subpart G and 40 CFR Parts 1500 to 1508).
	b	Prepare an Environmental Impact Statement (EIS) Notice of Preparation. Environmental Impact Statement Notice Requirements for Responsible Entities are provided on HUD’s website at https://www.hudexchange.info/resource/3192/environmental-impact-statement-notice-requirements/ .
	c	Prepare and publish the draft EIS.
	d	Public comment period (minimum 45 days ⁷) on draft EIS and incorporation of comments into the final EIS.

⁷ See <https://www.epa.gov/nepa/national-environmental-policy-act-review-process>.

Number	Procedures for HUD NEPA Environmental Review
e	Prepare and publish the final EIS. Publication of the final EIS begins the minimum 30-day "wait period," in which agencies are generally required to wait 30 days before making a final decision on a proposed action.
f	Publish or post the NOI/RROF. The NOI/RROF should be available for a minimum of seven (7) days if published and 10 days if posted/mailed.
g	<p>All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the RROF, then the activity/project must be re-evaluated accordingly.</p> <ul style="list-style-type: none"> • After conclusion of public comment period, and incorporation of comments, the RE sends the RROF and proof of public notice to HUD⁸ and to DED (if DED is not the RE). • A 15-day period commences for HUD to receive objections to the release of funds. • HUD issues authority to release grant funds and the Environmental Review is complete.

8.10 REQUEST FOR RELEASE OF FUNDS

Following completion of a CEST level of Environmental Review, the RE must publish an NOI/RROF. A template for the NOI/RROF is provided as [**Notice of Intent to Request Release of Funds \(NOI/RROF\) Template**](#).

In most instances, an EA will result in a finding that the project is not an action that significantly affects the quality of the environment and, therefore, does not require an EIS. If this is the case, as described in **Table 7** above, the RE must complete the following:

- Publish and distribute a public notice called a combined/concurrent notice of FONSI and NOI/RROF.
- The RROF and Environmental Certification (made on the same form) must be submitted to DED or HUD (if DED is the RE) no sooner than 16 days after publishing and 19 days after posting the combined/concurrent notice. The Certification must be signed by the CO of the jurisdiction.
- DED or HUD (if DED is the RE) must hold the Release of Funds for a 15-day period to allow for public comment. If no comments are received during this time, DED or HUD (if

⁸ HUD has directed that, effective December 31, 2021, DED is required to enter the environmental review into HUD Environmental Review Online System ("HEROS") and submit all RROF forms via HEROS to HUD for review.

DED is the RE) sends back a signed Authorization to Use Grant Funds and the project may proceed.

HUD established HEROS for RROF submissions. Form 7015.15, the cover letter, the affidavit of publication, copy of the notice, and the copy of the distribution list are to be submitted via the HEROS online tool, which further provides guidance regarding the Environmental Review process. DED will submit these documents through HEROS for projects on which DED is acting as the RE. For projects where other entities (e.g., cities and counties) are acting as the RE, these documents will be submitted to DED, who will review them and provide an AUGF, if appropriate. The method for transmittal of these RROF documents to DED will be provided by DED's Program Manager for each program.

8.11 CITIZEN PARTICIPATION

Subrecipients and Successful Applicants are required to provide meaningful opportunities for public participation. For general guidance on the State of Nebraska's citizen participation, including information regarding notices of public hearings, methods of notice distribution, and public comment, refer to the State of Nebraska's CDBG-DR Citizen Participation Plan (CPP) available on DED's website.

Key opportunities for citizens to get involved in the NEPA process include:

- When the Subrecipient or Successful Applicant begins the NEPA analysis; and
- When a NEPA document is published for public review and comment.

The procedures outlined throughout this chapter determine the specific steps in the NEPA process where there are opportunities for public involvement.

8.12 NEPA PUBLIC PARTICIPATION REGULATION

NEPA regulation⁹ requires that Subrecipients and Successful Applicants conduct the steps defined in **Table 8** to ensure public participation. DED will review these elements to ensure compliance.

⁹ 40 CFR § 1506.6.

Table 8: Procedures for Public Participation

Number	Procedures for Public Participation
1	Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.
2	<p>Provide public notice of NEPA-related hearings, public meetings, and other opportunities for public involvement and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected by their proposed actions. When selecting appropriate methods for providing public notice, agencies shall consider the ability of affected persons and agencies to access electronic media.</p> <p>In all cases, the RE shall notify those who have requested notice on an individual action.</p> <p>In the case of an action with effects of national concern, notice shall include publication in the Federal Register. HUD and the RE may notify organizations that have requested regular notice.</p> <p>In the case of an action with effects primarily of local concern, the notice may include:</p> <ul style="list-style-type: none"> • Notice to State, Tribal, and local governments and agencies that may be interested or affected by the proposed action. • Publication in local newspapers (in papers of general circulation rather than legal papers). This may include publications in Spanish and other languages to accommodate limited English proficiency persons. • Notice through other local media. • Notice to potentially interested community organizations including small business associations. • Publication in newsletters that may be expected to reach potentially interested persons. • Direct mailing to owners and occupants of nearby or affected property. • Posting of notice on- and off-site in the area where the action is to be located. • Notice through electronic media (e.g., a project or RE website, email, or social media).
3	Hold or sponsor public hearings, public meetings, or other opportunities for public involvement whenever appropriate or in accordance with statutory requirements applicable to the agency.

Number	Procedures for Public Participation
4	Solicit appropriate information from the public.
5	Explain in its procedures where interested persons can get information or status reports on EISs and other elements of the NEPA process.
6	Make EISs, comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act, as amended (5 USC §552).

8.13 RECORDKEEPING

DED is required to provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable State and local laws regarding privacy and confidentiality. For additional information regarding recordkeeping requirements, see **Chapter 17: Recordkeeping and Data Management**.

Subrecipients and Successful Applicants must:

1. Ensure the CO certifies all ERRs.
2. Submit the certified ERRs, including all accompanying forms and reports (e.g., public notices, EAs, EISs, NOIs, and RROFs), for digital scanning and logging in a shared-access drive.
3. Store hard copies of the ERRs and ensure they remain accessible in a centralized located shared-access drive for availability.

To comply with NEPA regulation,¹⁰ Subrecipients and Successful Applicants must:

1. File EISs together with comments and responses with the EPA Office of Federal Activities, consistent with EPA procedures.
2. File statements with EPA no earlier than they are also transmitted to participating agencies and made available to the public. EPA may issue guidelines to implement its responsibilities.

¹⁰ 40 CFR § 1506.10.

TOOLKIT LIST

The following documents for **Chapter 8: NEPA** are available on the [Toolkit section of DED's website](#):

- Environmental Assessment for HUD-funded Projects Template
- Finding of Categorical Exclusion, Not Subject to Related Federal Statutes and Authorities [24 CFR § 58.35(b)] Template
- Finding of Exempt Activity [24 CFR § 58.34(a)] Template
- NEPA Statutory Checklist Form for Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 Template
- Notice of Intent to Request of Release of Funds (NOI/RROF) Template
- Sample Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds