



ENVIRONMENTAL REVIEW UPDATES FOR PUBLIC HOUSING AUTHORITIES

David A. Storms

Regional Environmental Officer
U.S. Department of Housing and Urban Development
Office of Environment and Energy (OEE)
Fort Worth, TX

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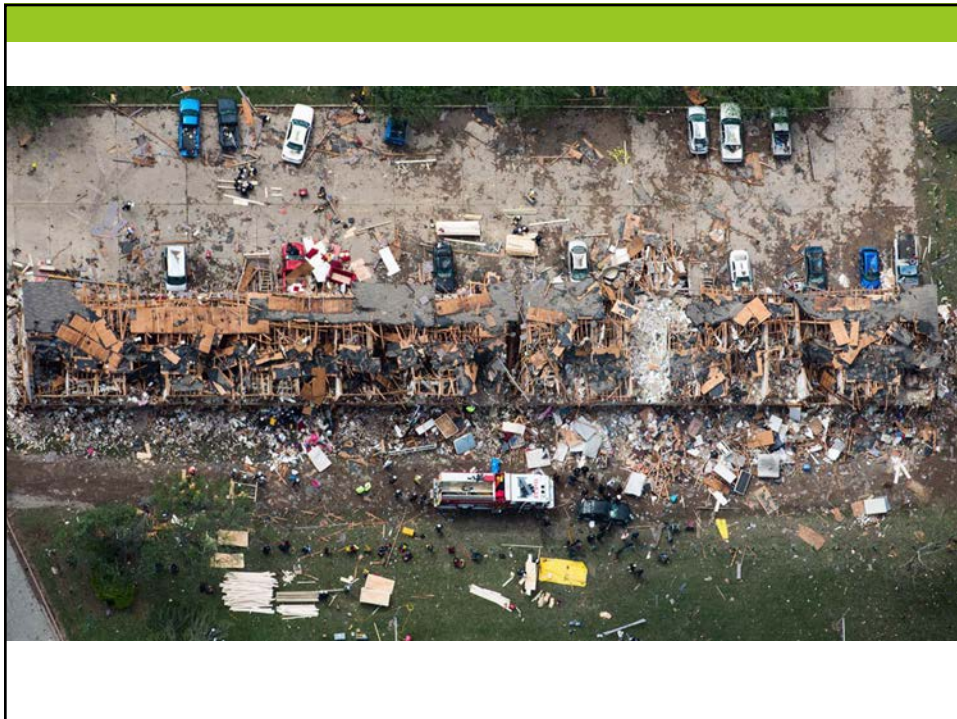


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Outline

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HUD's Office of Environment and Energy

- Administratively located within Community Planning and Development (CPD)
- Responsible for overall oversight of HUD's environmental review procedures in compliance with NEPA and the related laws and authorities as detailed in 24 CFR Parts 58 and 50
- Works collaboratively with all applicable HUD program areas Provide technical assistance and training to staff, grantees, local governments, and consultants*
- Monitoring

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Region VI OEE Staffing

HUD REGION VI ENVIRONMENTAL OFFICERS

Name	Position	Portfolio	Contact Information
David Storms	Regional Environmental Officer	New Mexico, San Antonio FO, TDA, TDHCA	(817) 978-5540 david.a.storms@hud.gov
Laura Myers	Field Environmental Officer	Fort Worth FO, Houston FO	(817) 978-5947 laura.l.myers@hud.gov
John Derinzy	Field Environmental Officer	Arkansas, Oklahoma	(817) 978-5623 john.w.derinzy@hud.gov
Kelly Warner	Field Environmental Officer	Region VI CDBG-DR and all disaster recovery, Louisiana	(817) 978-5622 kelly.s.warner@hud.gov

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Why are we here talking about this?

National Environmental Policy Act of 1969 (NEPA)

- National charter for environmental protection
- Established Council on Environmental Quality (CEQ)
- Requires all Federal agencies to adopt a systematic interdisciplinary approach to decision-making to ensure environmental values are considered



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ENVIRONMENTAL REVIEW

The Basics

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Environmental Review “101”

- HUD’s NEPA-implementing regulations are found at **24 CFR Parts 50 and 58.**

Basic Concepts:

- “Responsible Entity”
- Defining a “Project”
- Levels of Review
- Related Laws and Authorities
- Request for Release of Funds/Certification
- Environmental Review Record
- “Choice-limiting Actions”

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Responsible Entity

“For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines that infeasible, the county, or if HUD determines this infeasible, the State;”

(§58.2(a)(7)(ii)(B))

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Defining a “Project”

- Textbook Definition: “an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.” (§58.2)
- Aggregation: Functional vs. Geographical
- Include the “Who, what, when, where, and why” (including ALL funding sources)
- Include the **“maximum anticipated scope”**
- Program funds are **NOT** the sole basis for aggregation.

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Levels of Review

- Exempt (§58.34)
- Categorically-Excluded Not Subject to §58.5
- Categorically- Excluded Subject to §58.5
- Environmental Assessment (§58.36)
- Environmental Impact Statement (§58.37)
- (Note: §58.6 applies to Exempt, CE, and EA-level projects.)

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Related Laws and Authorities

- Examples:
- Historic Properties (National Historic Preservation Act of 1966)*
- Floodplain Management (EO 11988)
- Wetland Protection (EO 11990)
- Air Quality (Clean Air Act)
- Sole Source Aquifers (Safe Drinking Water Act of 1974)
- Endangered Species (Endangered Species Act of 1973)
- Also.....§58.5(i)(2)(i) Policy on contamination

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Requests for Release of Funds/Certification

- Finding of No Significant Impact (FONSI) applicable to CEST* and EA level projects.
- Public Comment Periods:

(a) Finding of No Significant Impact (FONSI)	15 days when published ,or if no publication, 18 days when mailing or posting
(b) Notice of Intent to Request Release of Funds (NOI-RROF)	7 days when published or, if no publication, 10 days when mailing or posting
(c) Concurrent or Combined Notices	15 days when published or, if no publication, 18 days when mailing or posting

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RROF/Certification (cont'd)

- RROF does NOT apply to Exempt or CENST projects
- RROF sent through a HUD 7015.15 signed by the RE's **Certifying Officer** AND **PHA ED** after applicable public comment period.
- Request includes the 7015.15 AND the proof of publication/posting/ mailing
- RROF package sent from PHA to the local PIH field office
- Upon receipt, HUD must allow for a 15-day objection period. Objections must adhere to the requirements of §58.75.
- The HUD Approving Official will sign the 7015.16 and send to the PHA with a copy to the RE. Project is approved!

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Environmental Review Record

- Must be maintained by the **Responsible Entity**.
- Must be made available for review by the public.
- Must meet the requirements of §58.38



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Choice-Limiting Actions

- Rooted in NEPA
- Referenced at §58.22(a) for HUD projects
- Prior to receiving environmental clearance a PHA, or anyone else in the development process, must not commit:
 - HUD Funds, or
 - Non-HUD funds if the activity would:
 - have an adverse environmental impact, or
 - limit the choice of reasonable alternatives

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Examples of Choice-limiting Actions:

- Real property acquisition
- Leasing
- Disposition
- Demolition
- Rehabilitation
- Repair
- Construction
- Site improvements

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Consequences of Violating §58.22(a)



- **Regulatory violation:**
 - Commitment of Non-HUD Funds
 - Can result in loss of all HUD assistance for the project
- **Statutory Violation:**
 - Commitment of HUD Funds
 - Can affect funding for entire program under which violation occur

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PIH NOTICE 2016-22

REVIEW

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Purpose of Notice PIH 2016-22

1. Clarify the applicability of environmental reviews to all PHA activities at project site(s) assisted or to be assisted by HUD and to the use of all HUD funds
2. Reiterate the prohibition on the obligation or expenditure of any funding without environmental clearance
3. Presents submission and processing requirements using a five-year submission period as long as there are no changes to the project scope or environmental conditions
4. Provide a Part 50 programmatic determination for administrative, management, and certain maintenance activities and for Housing Choice Voucher (HCV) activities.

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Environmental Reviews are required for:



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Definitions

- **Environmental Clearance.** The final approval given by the HUD Approving Official. Environmental clearance for Part 50 reviews is the final signature of the HUD Approving Official in HEROS or on the paper Form HUD-4128. Environmental clearance for Part 58 is the final electronic signature of the HUD approving official or the State in HEROS or on the HUD Form 7015.16, Authorization to Use Grant Funds (AUGF). An environmental clearance is required prior to spending funds or commencing any activity on or at a project site in accordance with 24 CFR part 50 or 58.
- **Environmental Project Site.** A project site consists of buildings or other improvements and parcels of land that logically group together as a single, cohesive setting. For scattered site units, the project site is defined at the neighborhood level, so long as the boundaries of the neighborhood are clearly identified. Since environmental conditions vary from one geographic area to the next, each separate public housing project site is subject to a separate environmental review. A project site may or may not comprise an entire asset management project (AMP) or non-asset management development.

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Maintenance vs. Rehabilitation

- Maintenance activities slow or halt deterioration of a building and do not materially add to its value or adapt it to new uses.
- Notice CPD 16-02 “Guidance for Categorizing an Activity as Maintenance for Compliance with HUD Environmental Regulations, 24 CFR Parts 50 and 58” provides guidance and a table of specific examples. It is essential that project descriptions provide sufficient information for the RE to distinguish between maintenance and rehabilitation activities to avoid NEPA non-compliance.



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CPD NOTICE 06-02

REVIEW

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Issue:
Non functional Kitchen



Maintenance?
Kitchen
Remodel



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Issue:
Deteriorated Toilet



Maintenance ?
Replace Toilet



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Issue:
Peeling Paint




Maintenance ?
Sandblast to
remove paint

No!




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Issue:
Leaky Window




Maintenance ?
Replace
Windows




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Issue:
Tree falls
on a home



Maintenance ?
Remove tree and
patch the roof



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SPECIAL TOPICS

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Relationship to Other PHA Plans

- Although the environmental review process is now de-coupled from the CFP process, PHAs are encouraged to create efficiencies through alignment of various planning cycles, if possible.
- For PHAs opting for a Fixed 5-Year Action Plan, HUD strongly recommends aligning the environmental review period to the Fixed 5-Year Action Plan. For PHAs opting for a Rolling 5-Year Action Plan, HUD anticipates there will be no alignment between the plan periods.
- Additionally, this is separate from the PHA Annual Plan and the PHA Five-year Plan (and the AFH)

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Emergencies and Disasters

- Environmental regulations at 24 CFR §58.34(a)(10) allow for an expedited review for improvements related to disasters and imminent threats.
- PHAs do not have the authority to determine which activities do or do not alter environmental conditions. For emergencies and disasters, PHAs may request a Part 50 Review from their local HUD field office and HUD will expedite reviews related to emergency work items.
- Capital Fund Emergency/Disaster Grants will not typically qualify for expedited Part 50 review.

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Section 18: Demolition and Disposition

24 CFR §970.13(b) provides four factors to consider when determining whether the future site reuse can “reasonably” be considered to be known:

- Private, Federal, state, or local funding for the site reuse has been committed;
- A grant application involving the site has been filed with the Federal government or a state or local unit of government;
- The Federal government or a state or unit of local government has made a commitment to take an action, including a physical action, that will facilitate a particular reuse of the site; and
- Architectural, engineering, or design plans for the reuse exist that go beyond preliminary stages.

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Housing Choice Voucher Activities

HCV activities are not subject to further environmental review, with the following exceptions:

1. HCV Admin Buildings: the PHA obtains environmental clearance for any rehabilitation or renovation activity occurring at the site.
2. Homeownership Units: the PHA obtains environmental clearance prior to providing funding or beginning new construction.
3. Project Based Vouchers: the PHA obtains clearance prior to entering into HAP or AHAP. Includes the maximum anticipated scope of the project.



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Small & Rural PHA Environmental Review Exemption

Economic Growth Act Section 209, citable as Section 38 to the United States Housing Act of 1937

([42 U.S.C. 1437](#) *et seq.*)

Federal Register Notice on Small & Rural PHAs

<https://www.federalregister.gov/documents/2020/02/27/2020-04004/economic-growth-regulatory-relief-and-consumer-protection-act-initial-guidance-on-property>

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Small & Rural PHA

A PHA is considered a “small & rural PHA” if:

- (1) it administers 550 or fewer combined public housing units and vouchers, and
- (2) its main office is in a rural area or if the majority of the public housing units and vouchers it administers (combined) is located in rural areas.

Link to the Section 209 Small Rural PHA List of 1,519 PHAs
(REAC created it in January 2020):

https://www.hud.gov/program_offices/public_indian_housing/pha/lists

[Small Rural PHA List \[MS-Excel\]](#)

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Provision for two types of burden relief to small & rural PHAs

- ▶ For voucher units assisted under Section 8(o), PHAs must make periodic inspections at least once every three years (instead of at least once every two years).
- ▶ **An exemption from environmental review requirements for development and modernization projects not exceeding \$100,000.**
- ▶ **The exemption applies to any section 9(d) Capital Fund, section 9(e) Operating Fund, or section 8(o)(13) PBV eligible work activity with a total project cost of \$100,000 or less, measured at the project site level.**
- ▶ Eligible PHAs may carry out such exempted activities without a request for an environmental review or determination from a Responsible Entity or HUD.
- ▶ *Other streamlining provisions included in section 209 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (signed May 24, 2018) will be implemented later through rulemaking.*

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RESOURCES AVAILABLE

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HUD Exchange ER Resources

- ▶ <https://www.hudexchange.info/programs/environmental-review/>
- ▶ <https://www.hudexchange.info/programs/environmental-review/federal-related-laws-and-authorities/>
- ▶ <https://www.hudexchange.info/resource/5119/environmental-review-record-related-federal-laws-and-authorities-partner-worksheets/>
- ▶ <https://www.hudexchange.info/programs/environmental-review/heros/>
- ▶ <https://www.hudexchange.info/trainings/wiser/>
- ▶ <https://www.ecfr.gov/cgi-bin/ECFR?page=browse> (24 CFR Part 58 and Part 50)

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