

# ENVIRONMENTAL REVIEW PROCESS

## I. INTRODUCTION

Section 104(g) of Title I of the Housing and Community Development Act of 1974, as amended by Section 103(g) of the Housing and Community Development Amendments of 1979, requires all recipients of Community Development Block Grant (CDBG) funds to assume responsibility for completing an environmental review of proposed project activities in accordance with the National Environmental Policy Act (NEPA) of 1969, and other provisions of law which further its purposes, prior to committing any funds to the project (See 24 CFR 58.22 at the following website: <http://portal.hud.gov/hudportal/documents/huddoc?id=r4reghandbook.pdf>)

Because the type of environmental review conducted (See Section III D below) will depend upon the scope of the project's activities, it is important that the grantee carefully describe all major project activities and the impact on the environment where project activities will occur. The grantee should request assistance from their grants manager if any questions arise during the review.

**The grantee must maintain an historical, written, and defensible record of all documentation chronicling actions taken during the environmental review process. This record is known as the Environmental Review Record (ERR). (See Form 32, Environmental Review Checklist and Form 33, Environmental Review Record (ERR) Content).**

No funds for project costs may be released until the environmental review process is completed and the ERR is reviewed and approved by the Arkansas Economic Development Commission.

## II. ENVIRONMENTAL LAWS AND REGULATIONS

All environmental review requirements are divided into two categories of regulation. The first category includes NEPA and NEPA-implementing regulations issued by the Council on Environmental Quality (CEQ). The second category includes all other related laws, authorities, and environmental regulations referenced in 24 CFR 58.5 as established by other statutory requirements of various federal statutes, executive orders, and regulations.

### A. National Environmental Policy Act of 1969, as Amended

As its name implies, the National Environmental Policy Act of 1969, as amended, establishes national environmental policy, goals and procedures to protect, restore and/or enhance environmental quality that must be adhered to by recipients of federal funds. The two basic regulatory documents that implement NEPA are

- 24 CFR Part 58, **Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities**, as amended October 29, 2003.
- 40 CFR Parts 1500-1508: **National Environmental Review Policy Act Regulations** issued by the CEQ.

There are also federal statutes, executive orders, and regulations discussed below supplementing each of the above documents that must be followed.

**B. Related Federal Laws and Authorities**

In accordance with the provisions of law cited in 24 CFR 58.1, the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the authorities that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

“Related Federal laws and authorities” are statutory and regulatory requirements, other than NEPA, established by separate Federal statutes and executive orders and the federal agencies such as HUD. These requirements are grouped into twelve categories that are summarized below:

**1. Historic Preservation**

<b>Major Legislation:</b>	<b>National Historic Preservation Act of 1966 (16 U.S.C. 470 <i>et seq.</i>), particularly sections 106 and 110</b>  <b>Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971</b>  <b>The Reservoir Salvage Act of 1960 as amended by the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469 <i>et seq.</i>)</b>
<b>Citations:</b>	<b>36 CFR 800</b>
<b>Guidance:</b>	<a href="https://www.hudexchange.info/programs/environmental-review/historic-preservation">https://www.hudexchange.info/programs/environmental-review/historic-preservation</a>
<b>Online Resource:</b>	<b>Arkansas Register of Historic Places search:</b> <a href="http://www.arkansaspreservation.com/Historic-Properties/National-Register/national-register-of-historic-places">http://www.arkansaspreservation.com/Historic-Properties/National-Register/national-register-of-historic-places</a>
<b>Applicability:</b>	<b>All property listed on or eligible for listing on the National Register of Historic Places; located within or adjacent to a historic district; or a property whose area of potential effect includes a historic district or property</b>
<b>Comment Agency:</b>	<b>Arkansas Historic Preservation Program 1500 Tower Building 323 Center Street Little Rock, AR 72201</b>
<b>Contact Person:</b>	<b>State Historic Preservation Officer (501) 324-9880 info@arkansaspreservation.org</b>

This act requires that federal agencies take into account how its undertakings could affect historic properties. Grantees must notify (in writing with a project summary, topographic site map, and information and photos of existing structures on and adjacent to project area) their State Historic Preservation Officer (SHPO) of all proposed project activities to ensure that structures, sites, buildings, districts and objects with national, state or local historic, architectural, archeological or cultural significance are not affected by the project. Any adverse comments, including proposed mitigation actions, must be

addressed by the grantee to the full satisfaction of the SHPO before environmental review clearance can be granted. The SHPO will either state that the project has no effect, no adverse effect, or an adverse effect in accordance with the above considerations. If a project has an adverse effect on historic or cultural aspects of the area, then the National Advisory Council on Historic Preservation must also be invited to review the project.

Other related legislation/requirements include:

- **Preservation of Historic and Archaeological Data Act of 1974** (16 USC 469-469c -- Part of SHPO review)
- **Executive Order 11593, Protection and Enhancement of the Cultural Environment** (Part of SHPO review)
- **The Native American Graves Protection and Repatriation Act**, (43 CFR Part 10, January 13, 1997)

## 2. Floodplain Management

<b>Legislation:</b>	Executive Order 11988, Floodplain Management, May 24, 1977
<b>Citations:</b>	24 CFR 55
<b>Guidance:</b>	<a href="https://www.hudexchange.info/programs/environmental-review/flood-insurance/">https://www.hudexchange.info/programs/environmental-review/flood-insurance/</a>
<b>Applicability:</b>	Any proposal located within a 100-year floodplain and for critical actions in a 500-year floodplain (as defined in 24 CFR 55)
<b>Online Resource:</b>	FEMA Map Service Center <a href="http://www.msc.fema.gov">http://www.msc.fema.gov</a> Findings should cite the map panel number of the official maps issued by FEMA on the basis of which the findings were made.  Flood Insurance Worksheet: <a href="https://www.hudexchange.info/resources/documents/Flood-Insurance-Worksheet.docx">https://www.hudexchange.info/resources/documents/Flood-Insurance-Worksheet.docx</a>
<b>Publication:</b>	FEMA Publication 480: <u>National Flood Insurance Program (NFIP) Floodplain Management Requirements: A Study Guide and Desk Reference for Local Officials</u> Download this publication at: <a href="http://www.floods.org/index.asp">http://www.floods.org/index.asp</a>
<b>Comment Agency:</b>  <i>(it is not required to write a letter to these agencies if a map is included and a site visit has been conducted)</i>	<b>If area has not been mapped, or you need technical assistance reading a map, contact:</b> <b>Local Floodplain Administrator –</b> Assistance provided by Arkansas Natural Resource Commission, Floodplain Management Section – (501) 682-3969  <b>If your community does not participate in the NFIP, and there is no local floodplain administrator, you must obtain the best information possible from one or more of these qualified sources:</b>

The purpose of this legislation is to reduce the risk of flood loss, minimize the impacts of floods on human safety, health, and welfare; and, to the greatest extent possible, restore the natural and beneficial values served by floodplains. To achieve this purpose, grantees must avoid direct or indirect support of floodplain development whenever there is a practical alternative. If the above-ground part of the project is in a floodplain, then the eight-step procedure for floodplain management as outlined below must be followed.

To determine if your proposed project area includes a regulatory floodplain, contact the local floodplain administrator for assistance. All communities which participate in the National Flood Insurance Program (NFIP) are required to appoint an official floodplain administrator. The Arkansas Natural Resources Commission may be contacted for assistance in identifying a community's floodplain administrator, but does not make floodplain determinations in lieu of them.

A community may make a floodplain determination on its own by using the FEMA Flood Rate Insurance Map covering the project area. The portion of interest of the map may be printed as a "FIRMette." Because a FIRMette is a full-scale section of an official FEMA Flood Insurance Rate Map, it can be used in all aspects of the NFIP, including floodplain management, flood insurance issues, and documentation for the ERR.

If it is determined that any part of a proposed project lies in regulatory floodplain, you must complete the HUD 8-step Decision Making Process to provide an additional opportunity for public involvement and to evaluate floodplain development.

## **FLOODPLAIN MANAGEMENT GUIDELINES**

The objective of the guidance provided in Executive Order (E.O.) 11988 and 24 CFR 55 is to avoid the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative.

24 CFR 55 applies to all projects located in areas subject to inundation by a flood with a one percent chance of occurring in any given year, i.e. "100 year or base flood." Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) floodplain maps are established as the minimum standards for making this determination.

24 CFR 55 requires that grantees with projects located in flood hazard areas do the following:

1. Avoid the base floodplain (unless this is the only practicable alternative).
2. Adjust the project to one foot above the base floodplain. If the base floodplain cannot be avoided, adjust the project to:
  - a. Reduce the hazard and the risk of flood loss.
  - b. Minimize the impact of floods on human safety, health and welfare.
  - c. Restore and preserve the natural and beneficial floodplain values.
3. Evaluate, design and implement all agency actions to meet E.O. 11988 policies.
4. Notify the public if it has been determined that there is no practicable

alternative to floodplain development. This will occur after there has been early notice to the public on plans and proposals and alternative courses of action.

5. Amend or issue regulations and procedures to:
  - a. Avoid the base floodplain if at all practicable.
  - b. Provide for actions to adjust the base floodplain if it cannot be avoided.
  - c. Keep the public informed of proposed actions in the base floodplain and encourage participation in floodplain decision making.

These guidelines are not intended to prohibit floodplain development in all cases, but to create consistent government policy against such development in flood hazard areas.

### **EIGHT-STEP DECISION MAKING PROCESS FOR E.O. 11988**

1. Determine if any above-ground part of the project is in a floodplain or wetland by reviewing applicable FEMA National Flood Insurance Program floodplain maps as discussed above.
2. Begin the early floodplain public review process by notifying citizens by legal publication (Form 18), Public Notice for Early Public Review, about the opportunity for review and comment regarding plans or proposals for actions in floodplains. This notice must be published in a non-legal section of the newspaper of widest circulation. A 15-day comment period begins the day after publication. If any written comments are received, the Responsible Entity must respond in writing, resolve any issues and provide copies of all documents to the Arkansas Economic Development Commission.
3. Identify and evaluate all possible project alternatives to locating in a floodplain or wetland, including the no-action alternative. Specific evaluation should include:
  - a. Carrying out the proposed action at a location outside the 100-year floodplain (alternative sites).
  - b. Other means that accomplish the same purpose as the proposed action (alternative actions).
  - c. No action. Identify if threats to lives and property and/or adverse impacts on the floodplain/wetland outweigh the benefits of the proposed project. This is also an alternative, and assessment of this course is required. The alternative of no action probably cannot be fully evaluated until a determination has been made in Step 4 of the harm to or within the floodplain resulting from the proposed action.
4. Identify all adverse impacts of the proposed action including:
  - a. Positive and negative impacts, both direct and indirect,
  - b. Negative or harmful impacts, both direct and indirect,
  - c. Concentrated impacts, at or near the floodplain,
  - d. Dispersed or remote impacts occurring distant from the floodplain/wetland,
  - e. Short-term impacts to the floodplain/wetland (impacts that are temporary occurring immediately after an action lasting only a short while),
  - f. Long-term impacts to the floodplain/wetland (impacts that occur during or after an action that persists for considerable time or indefinitely).
5. Identify mitigation measures to reduce impacts, restore, and preserve the beneficial value of the affected floodplain if harm should result from the proposed action.
6. Re-evaluate alternatives identified in Step 3, taking into account all identified impacts and mitigation measures. For proposed actions in the 100-year floodplain, the re-evaluation should consider if the action is still feasible at this site. If not, consider limiting the action to make non-floodplain sites practicable. If neither is acceptable, the alternative is no action.

7. Provide findings and public explanation. If re-evaluation results in the determination that there is no practicable alternative to locating in or impacting the floodplain, a statement of findings and public explanation must be provided for the proposed action. The written statement of findings must include:
  - a. A description of why the proposed action must be located in the floodplain,
  - b. A description of all significant facts considered in making the determination, including alternative sites and actions,
  - c. A statement indicating whether the actions conform to state or local floodplain protection standards, if applicable,
  - d. A provision for a brief comment period prior to agency action (7 days),
  - e. A statement listing other involved agencies and individuals. At this step, notification of the findings must be published (Form 19), Notice of Explanation of Project Located in a Floodplain), allowing 7 days for public comment.
8. Implement the proposal with appropriate mitigation. Implementation may only proceed provided compliance has been demonstrated with respect to all prior steps and provided the project has been approved by the State in accordance with HUD regulation 24 CFR 58. However, there is a continuing responsibility to ensure that the mitigating measures identified in Step 7 are implemented. Mitigation measures must be incorporated, as appropriate, in project contracts and all related agreement documents.

### 3. Wetlands Protection

<b>Legislation:</b>	<b>Executive Order 11990</b>
<b>Citation:</b>	<b>3 CFR 2, 5</b>
<b>Guidance;</b>	<a href="https://www.hudexchange.info/environmental-review/wetlands-protection/">https://www.hudexchange.info/environmental-review/wetlands-protection/</a>
<b>Applicability:</b>	<b>Any new construction located within a designated wetland.</b>
<b>Online Resource:</b>	<p><b>National Wetlands Inventory (NWI) mapping tool</b>  <a href="http://www.fws.gov/wetlands/data/mapper.HTML">http://www.fws.gov/wetlands/data/mapper.HTML</a></p> <p><b>Arkansas Wetland Resource Information Management System</b>  <a href="http://awrim.s.cast.uark.edu/home/">http://awrim.s.cast.uark.edu/home/</a></p> <p><b>Wetlands Protection Worksheet</b>  <a href="https://www.hudexchange.info/resources/documents/Wetlands-Protection-Worksheet.docx">https://www.hudexchange.info/resources/documents/Wetlands-Protection-Worksheet.docx</a></p>
<p><b>Comment Agencies:</b></p> <p><i>(it is not required to write a letter to these agencies if a map is cited and a site visit has been conducted)</i></p>	<p><b>Wetlands Identification/Issuance of Section 404 and related wetlands permits:</b></p> <p><b>United States Department of the Army          Corps of Engineers          Regulatory Branch, Enforcement Section (Little Rock, Vicksburg or Memphis District depending on area of State);          P.O. Box 867          700 West Capitol          Little Rock, AR 72201          (501) 324-5629</b></p> <p><b>Wetlands Information/Mitigation:</b>  <b>United States Fish and Wildlife Service</b></p>

	<b>1875 Century Blvd., Room 240, Atlanta, GA 30345</b>
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Wetland regulations include federal, state, and local law and affect development not only in, but also adjacent to, wetlands.

Policy directives of this legislation are to:

- a. Avoid long- and short-term adverse impacts associated with the destruction or modification of wetlands,
- b. Avoid direct or indirect support of new construction in wetlands whenever there is a practical alternative,
- c. Minimize destruction, loss or degradation of wetlands,
- d. Preserve/enhance natural and beneficial values served by wetlands, and
- e. Involve the public throughout the wetlands protection process.

A check of the National Wetlands mapping tool, along with documentation of a site visit, may suffice for determination of a projects effect on a wetland.

If it is determined that a project will affect a wetland, the same eight-step decision-making process above must be followed. You may also have to obtain a Section 404 Permit from the U.S. Army Corps of Engineers before proceeding. All streams, creeks and other water sources adjacent to the project site must be examined

**4. Coastal Zone Management**

<b>Legislation:</b>	<b>Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et. seq.), as amended</b>
<b>Guidance;</b>	<a href="http://www.hudexchange.info/programs/environmental-review/coastal-barrier-resources">http://www.hudexchange.info/programs/environmental-review/coastal-barrier-resources</a>
<b>Applicability:</b>	<b>New construction, conversion of land use, major rehabilitation, and acquisition of undeveloped land.</b>
<b>Online Resource:</b>	<b>Coastal Barrier Resources Worksheet</b> <a href="http://www.hudexchange.info/resources/documents/Coastal-Barrier-Resources-Worksheet.docx">http://www.hudexchange.info/resources/documents/Coastal-Barrier-Resources-Worksheet.docx</a>

Arkansas has no coastal zones. The statutory checklist has been pre-filled to indicate such.

**5. Sole Source Aquifers**

<b>Legislation:</b>	<b>Safe Water Drinking Act of 1974</b>
<b>Citation:</b>	<b>40 CFR 149 (Environmental Protection Agency)</b>
<b>Guidance;</b>	<a href="https://www.hudexchange.info/environmental-review/sole-source-aquifers/">https://www.hudexchange.info/environmental-review/sole-source-aquifers/</a>
<b>Applicability:</b>	<b>Any new construction or development, which can affect aquifers designated by the EPA as the sole or principal drinking water source for an area and which, if contaminated, would create a significant hazard to public health.</b>

<b>Online Resource:</b>	Sole Source Aquifers Worksheet <a href="https://hudexchange.info/resouces/documents/Sole-Source-Aquifers-Worksheet.docx">https://hudexchange.info/resouces/documents/Sole-Source-Aquifers-Worksheet.docx</a>
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Arkansas has no sole source aquifers at this revision. This is indicated on the statutory checklist, and may be referenced by the above-referenced website, showing a map of the sole source aquifers in the region.

## 6. Endangered Species

<b>Legislation:</b>	<b>Endangered Species Act of 1973 (16 U.S.C. 1531 <i>et seq.</i>)</b>
<b>Citations:</b>	<b>50 CFR 402</b>
<b>Guidance:</b>	<a href="http://www.hudexchange.info/programs/environmental-review/endangered-species">http://www.hudexchange.info/programs/environmental-review/endangered-species</a>  <b>Endangered Species Act</b> <a href="http://www2.epa.gov/laws-regulations/summary-endangered-species-act">http://www2.epa.gov/laws-regulations/summary-endangered-species-act</a>
<b>Applicability:</b>	<b>Any project that may affect listed or proposed endangered or threatened species or critical habitats</b>
<b>Online Resource:</b>	<b>Rare Species:</b> <a href="http://www.naturalheritage.com/Default.aspx?SiteSearchID=3806&amp;ID=/search-results">http://www.naturalheritage.com/Default.aspx?SiteSearchID=3806&amp;ID=/search-results</a>
<b>Comment Agency:</b>	<b>United States Fish &amp; Wildlife Service</b> <b>Attn: Environmental Coordinator</b> <b>Arkansas Ecological Services Field Office</b> <b>110 S. Amity Road, Ste. 300</b> <b>Conway, AR 72032</b> <b>(501) 513-4470</b>  <b>Arkansas Natural Heritage Commission</b> <b>Attn: Data Manager</b> <b>1500 Tower Building, 323 Center Street</b> <b>Little Rock, AR 72201</b> <b>(501) 324-9762</b>

Grantees must determine whether their projects are likely to affect endangered or threatened species or critical habitats listed in accordance with the above Act. Grantees must consult with the United States Fish and Wildlife Service (USFWS) if a proposed project is likely to affect the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitats of plants and animal life.

If the project may affect listed endangered or threatened species or critical habitats, grantees must also consult with the Arkansas Heritage Program (AHP). The AHP is the research arm of the Arkansas Natural Heritage Commission, and strives to conserve Arkansas's natural diversity by identifying ecologically important areas and setting priorities to protect them and the species that inhabit them. To that end, the Arkansas Heritage Program maintains the Natural Heritage Inventory. The inventory is a

comprehensive and dynamic database that tracks the location and status of rare species and natural communities in Arkansas.

Any applicable comments must be addressed to the satisfaction of the comment agency prior to environmental review clearance. The USFWS must be notified if protected species are discovered during construction.

## 7. Wild and Scenic Rivers

<b>Legislation:</b>	<b>Wild and Scenic Rivers Act (16 U.S.C. 1271 <i>et seq.</i>)</b>
<b>Applicability:</b>	<b>New construction and the acquisition of undeveloped land for water resources projects (i.e., water and sewer lines), which are proposed in areas within one mile of a listed Federally recognized wild and scenic river, or a State designated wild or scenic free-flowing river segment listed on the Nationwide Rivers Inventory (NRI)</b>
<b>Online Resource:</b>	<p><b>HUD Guidance</b>  <a href="https://www.hudexchange.info/programs/environmental-review/wild-and-scenic-rivers">https://www.hudexchange.info/programs/environmental-review/wild-and-scenic-rivers</a></p> <p><b>Federally Recognized Wild &amp; Scenic Rivers list</b>  <a href="http://www.rivers.gov/">http://www.rivers.gov/</a></p> <p><b>Nationwide Rivers Inventory (NRI), Arkansas Segments</b>  <a href="http://www.nps.gov/ncrc/programs/rtca/nri/states/ar.html">http://www.nps.gov/ncrc/programs/rtca/nri/states/ar.html</a></p> <p><b>Wild and Scenic Rivers Worksheet</b>  <a href="https://www.hudexchange.info/resources/documents/Wild-and-Scenic-Rivers-Worksheet.docx">https://www.hudexchange.info/resources/documents/Wild-and-Scenic-Rivers-Worksheet.docx</a></p>
<b>Comment Agency:</b> <i>(it is not required to write a letter to these agencies if other documentation is provided.)</i>	<p><b>FEDERAL:</b>  <b>United States Fish &amp; Wildlife Service</b>  <b>Arkansas Ecological Services Field Office</b>  <b>110 S. Amity Road, Ste. 300</b>  <b>Conway, AR 72032</b>  <b>Phone: (501) 513-4470</b></p> <p><b>STATE:</b>  <b>National Park Service, Environmental Compliance</b>  <b>Midwest Regional Office</b>  <b>601 Riverside Drive</b>  <b>Omaha, NE 68102</b>  <b>Phone: (402) 661-1848</b></p>

The National Wild and Scenic River System was established to conserve the scenic, recreational and fish and wildlife values of certain rivers. The Act applies to rivers or segments of rivers designated by Congress or States. In accordance with the Act, CDBG projects cannot propose any activity affecting rivers on the Nationwide Inventory of potential wild, scenic and recreational rivers.

Arkansas's eight Federally Recognized Wild and Scenic Rivers are:

- f. Big Piney Creek
- g. The Buffalo River
- h. The Cossatot River
- i. Hurricane Creek
- j. The Little Missouri River
- k. The Mulberry River
- l. North Sycamore Creek
- m. Richland Creek

The State has also identified free-flowing river segments believed to possess one or more “outstandingly remarkable” natural or cultural values judged to be of more than local or regional significance. These locations are listed in the Nationwide Rivers Inventory (NRI). The NRI is a source of information for statewide river assessments and the use of Federal funding on stream-related projects.

New construction and the acquisition of undeveloped land for water resources projects (i.e., water and sewer lines, water retention ponds, etc.), which are proposed in areas within one mile of a listed wild and scenic river have the potential to impact these natural resources. Under a 1979 Presidential directive, all federal agencies must seek to avoid or mitigate actions that would adversely affect NRI segments.

Grantees must comply with the requirements of the Wild and Scenic Rivers Act both for Federally Recognized Wild and Scenic Rivers, and also for State designated Wild and Scenic Rivers. If mitigation measures are required by either comment agency, federal or state, they must be described and actions taken, if required, prior to commencing any physical activity.

## 8. Air Quality

<b>Legislation:</b>	<b>Clean Air Act (42 U.S.C. 7401 et seq.) as amended</b>
<b>Citations:</b>	<b>40 CFR 6, 51, 93 (EPA), Determining Conformity of Federal Actions to State or Federal Implementation Plans</b>
<b>Guidance:</b>	<a href="https://www.hudexchange.info/programs/environmental-review/air-quality">https://www.hudexchange.info/programs/environmental-review/air-quality</a>
<b>Applicability:</b>	<b>New construction and conversion projects within “non-attainment” or “maintenance” areas identified in the air quality State Implementation Plan (SIP) – Crittenden County</b>
<b>Online Resource:</b>	ADEQ Air Division <a href="http://www.adeq.state.ar.us/air/">http://www.adeq.state.ar.us/air/</a>  Air Quality Worksheet <a href="https://www.hudexchange.info/programs/environmental-review/air-quality-worksheet.docx">https://www.hudexchange.info/programs/environmental-review/air-quality-worksheet.docx</a>
<b>Contact Agency:</b>	<b>Arkansas Department of Environmental Quality Air Division 5301 Northshore Drive North Little Rock, AR 72118-5317 Phone: (501) 682-0737</b>
<b>Contact Person:</b>	<b>Compliance Engineer, Air Division</b>

The Arkansas Department of Environmental Quality (ADEQ) has been delegated as primary responsible for air quality issues in Arkansas. For the environmental review, air quality issues focus on whether the proposed project conforms to the air quality State Implementation Plan (SIP) and whether impact upon ambient air quality will be such that there will be no threat to the National Ambient Air Quality Standards (NAAQS).

The Clean Air Act prohibits federal assistance to projects that are not in conformance with the SIP. New construction and conversion, which are located in “non-attainment” or “maintenance” areas as determined by the EPA may need to be modified or mitigation measured developed and implemented to conform to the SIP.

Currently, Crittenden County is the only “non-attainment” area in Arkansas. All new construction projects in Crittenden County should be reviewed by ADEQ.

On a state level, grantees must assess the effect on air quality by their projects by analyzing both the impact of the proposed project on air quality in the community and the impact of the existing environment on the proposed project. Such consideration might, for example, range from arguing against locating child-care centers adjacent to an expressway to requiring dust-control measures during construction. Additionally, any companies receiving economic development funding must be in compliance with state and federal air quality standards and obtain all necessary permits.

As a matter of course, ADEQ will not conduct general reviews of projects for the purpose of commenting on regulatory compliance; however, they should be contacted whenever specific circumstances warrant or whenever permits are required.

## 9. Farmlands Protection

<b>Legislation:</b>	<b>Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 <i>et seq.</i>)</b>
<b>Citations:</b>	<b>7 CFR 658 (Department of Agriculture), Farmland Protection Policy</b>
<b>Guidance:</b>	<a href="https://www.hudexchange.info/programs/environmental-review/farmlands-protection">https://www.hudexchange.info/programs/environmental-review/farmlands-protection</a>
<b>Applicability:</b>	<b>Any new construction or acquisition of undeveloped land which affects prime and unique, or other farmland of statewide or local importance</b>
<b>Online Resource:</b>	<b>AD1006 Farmland Conversion Impact Rating Form</b> <a href="http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045394.pdf">http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045394.pdf</a> <b>Farmland Worksheet</b> <a href="https://www.hudexchange.info/programs/environmental-review/farmlands-protection-worksheet.docx">https://www.hudexchange.info/programs/environmental-review/farmlands-protection-worksheet.docx</a>
<b>Comment Agency:</b>	<b>United States Department of Agriculture (USDA)</b> <b>Natural Resources Conservation Services</b> <b>Attn: Assistant State Soil Scientist</b> <b>Room 3416, Federal Building</b> <b>700 West Capitol Ave.</b> <b>Little Rock, AR 72201-3225</b> <b>Phone: (501) 301-3172</b>

This act seeks to minimize the extent to which farmland that is prime, unique, or of other statewide or local agricultural significance is unnecessarily converted to nonagricultural uses.

Grantees are urged to avoid the use of the above-defined farmland whenever there is a practical alternative. Grantees must provide documentation which states that the proposed project site does not include prime or unique farmland, or other farmland of statewide or local importance as identified by the U.S. Department of Agriculture – Natural Resources Conservation Service (NRCS), or that if the project site does include prime farmland, it is located in an area committed to urban development or water storage.

If you cannot provide such documentation, or whenever covered farmland is converted to other uses, a Farmland Conversion Impact Rating Form AD 1006 must be completed by the grantee and approved by the USDA-NRCS.

## 10. Environmental Justice

<b>Legislation:</b>	<b>Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations</b>
<b>Guidance:</b>	<a href="https://www.hudexchange.info/programs/environmental-review/environmental-justice">https://www.hudexchange.info/programs/environmental-review/environmental-justice</a>  <a href="http://www3.epa.gov/environmentaljustice/index.html">http://www3.epa.gov/environmentaljustice/index.html</a>  <b>Environmental Justice Worksheet</b> <a href="https://www.hudexchange.info/programs/environmental-review/environmental-justice-worksheet.docx">https://www.hudexchange.info/programs/environmental-review/environmental-justice-worksheet.docx</a>
<b>Applicability:</b>	<b>All projects located in low-income or minority neighborhoods where the grantee proposes the acquisition of housing, the acquisition of land for development, and new construction.</b>
<b>Online Resource:</b>	<b>Environmental Justice Geographic Assessment Tool</b> <a href="http://www2.epa.gov/ejscreen">http://www2.epa.gov/ejscreen</a>

Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

Environmental justice issues may include, but are not limited to new, continued, or historically disproportionate potential for high and adverse human health and environmental effects on minority or low-income populations. The grantee will need to determine if the site or neighborhood suffers from disproportionate adverse health and environmental effects relative to the community at large. The grantee must consider mitigation or avoidance of adverse impacts from the project to the extent practicable.

The Environmental Justice Geographic Assessment Tool (referenced above as “online resource”), provides information for preliminary analysis of Environmental Justice areas of concern. Assessment variables include demographics, such as persons per square mile, per capita income, and percent below the poverty line. The EJ Assessment tool provides the ability to review these assessment variables and others with respect to several types of regulated facilities.

## C. HUD ENVIRONMENTAL STANDARDS

Unlike the other regulations, HUD Environmental Standards concern the impact of the environment on the project, not the project on the environment. Environmental standards shall apply to all HUD-assisted actions except where special provisions and exemptions are contained in each subpart of the CFR.

### 1. Noise Abatement and Control

<b>Legislation:</b>	<b>Noise Control Act of 1972 (42 U.S.C. 4901 <i>et seq.</i>)</b>
<b>Citations:</b>	<b>24 CFR 51, Subpart B</b>
<b>Guidance:</b>	<p><a href="https://www.hudexchange.info/programs/environmental-review/noise-abatement-and-control">https://www.hudexchange.info/programs/environmental-review/noise-abatement-and-control</a></p> <p><b>HUD's <i>The Noise Guidebook</i></b>  <a href="https://www.hudexchange.info/resource/313/hud-noise-guidebook/">https://www.hudexchange.info/resource/313/hud-noise-guidebook/</a></p>
<b>Applicability:</b>	<b>Housing new construction and rehabilitation, and noise sensitive projects (childcare centers or senior centers) located within 3000 ft. of a railroad, 1000 ft. of a major arterial street or within a 5 mile area of a commercial or military airport</b>
<b>Online Resource:</b>	<p><b>Noise Worksheet (for CEST Projects)</b>  <a href="https://www.hudexchange.info/programs/environmental-review/noise-abatement-and-control-CEST-worksheet.docx">https://www.hudexchange.info/programs/environmental-review/noise-abatement-and-control-CEST-worksheet.docx</a></p> <p><b>Noise Worksheet (for EA Projects)</b>  <a href="https://www.hudexchange.info/programs/environmental-review/noise-abatement-and-control-EA-worksheet.docx">https://www.hudexchange.info/programs/environmental-review/noise-abatement-and-control-EA-worksheet.docx</a></p> <p><b>Highway Rail Crossing Inventory</b>  <a href="https://safetydata.fra.dot.gov/OfficeofSafety/publicsite/downloaddbf.aspx">https://safetydata.fra.dot.gov/OfficeofSafety/publicsite/downloaddbf.aspx</a></p>

It is HUD's general policy to provide minimum national standards applicable to HUD programs to protect citizens against excessive noise in their communities and places of residence. Responsible entities under 24 CFR 58 must take into consideration the noise criteria and standards in the environmental review process and consider ameliorative actions when noise sensitive land development is proposed in noise exposed areas. Responsible entities shall address deviations from the standards in their environmental reviews.

Noise assessments will determine whether or not the level of the noise, measured in a value referred to as the day-night average sound level, is above a certain threshold. The day-night average sound level is the sound level produced as a result of the accumulation of noise from all sources that contribute to the external noise environment of the site. The standards shall usually apply to a location two meters from the (proposed) location of the building housing noise-sensitive activities from which the predominant noise exposure occurs or will occur.

To determine day-night average sound levels, grantees must complete a noise assessment with data obtained from the following sources:

- a. 3000 feet of a railroad: All railroad(s) within the defined project area
- b. 1000 feet of a major arterial: Arkansas Highway Department
- c. Within a contour area (5 miles) of a commercial or military airport: Local airport(s) or the Federal Aviation Administration

Completion of the assessment will yield a decibel (dB) level that will fall within three ranges:

<b>Exposure Levels</b>	<b>Day-Night Average Sound Levels (dB)</b>	<b>Special Requirements</b>
Acceptable	Not exceeding 65 dB	None
Normally Unacceptable	Above 65 dB, but not above 75 dB	Mitigation (See 24 CFR 51.104)
Unacceptable	Above 75 dB	Mitigation; Approval by HUD

Common examples of mitigation include

- 2. Reducing noise at its source
- 3. Locating noise-sensitive uses so that they will not be exposed to unacceptable noise levels
- 4. Modifying the path along which noise emissions travel to reduce noise levels at the receptor site
- 5. Designing or modifying structures to minimize noise levels

As a general rule, most CDBG projects will not involve urban residential activities and will therefore not require such assessments. If the project will be located within the above-defined distances of streets, railroads or airports, the applicability of this requirement should be discussed with the grants manager, and noise worksheets will be provided, if needed.

## 2. Explosive and Flammable Operations

<b>Legislation:</b>	<b>42 U.S.C. 3535(d)</b>
<b>Citations:</b>	<b>24 CFR 51, Subpart C; 24 CFR 58.5(i)</b>
<b>Guidance:</b>	<b>HUD Guidebook, “Citing of HUD-Assisted Projects Near Hazardous Facilities,” HUD-1060-CPD</b> <a href="https://www.hudexchange.info/programs/environmental-review/explosive-and-flammable-facilities">https://www.hudexchange.info/programs/environmental-review/explosive-and-flammable-facilities</a>
<b>Applicability:</b>	<b>All projects located within certain distances of an above-ground storage tank of 100 gallons or more</b>
<b>Online Resource:</b>	<b>Explosives and Flammables Worksheet</b> <a href="https://www.hudexchange.info/resources/documents/Explosive-and-Flammable-Facilities-Worksheet.docx">https://www.hudexchange.info/resources/documents/Explosive-and-Flammable-Facilities-Worksheet.docx</a>

All CDBG-funded projects must be located at an Acceptable Separation Distance (ASD) from specific, stationary, hazardous operations that store, handle or process hazardous substances. Such structures include any above-ground storage tank exceeding 100

gallons but do not include underground pipelines, containers less than 100 gallons when they contain common liquid industrial fuels, such as gasoline, fuel oil, kerosene and crude oil, and facilities/structures shielded from a proposed CDBG project by typography. Separation distance is generally one mile.

The ASD means the distance beyond which the explosions or combustion of a hazard is not likely to cause structures or individuals to be subjected to blast overpressure or thermal radiation flux levels in excess of the following established standards:

<b>Acceptance Criteria</b>	<b>Thermal Radiation</b>	<b>Blast Overpressure</b>
Building Exposure	10,000 BTU/sq. ft. per hr.	.5 PSI
Outdoor, Unprotected Facilities or Areas of Congregation for People	450 BTU/sq. ft. per hr.	.5 PSI

Grantees should visually inspect proposed project sites to ensure that no portions (including playground and outdoor gathering areas) are located at unacceptable distances. Grantees may use the calculation procedure or tables in the above-reference guidebook to determine that they are within safe distance.

### 3. Airport Clear Zones and Accident Potential Zones

<b>Legislation:</b>	<b>42 U.S.C. 1441</b>
<b>Citations:</b>	<b>24 CFR 51, Subpart D</b>
<b>Guidance:</b>	<b>Runway Clear Zones: 14 CFR 152</b> <b>Accident Potential Zone: 32 CFR 256</b> <a href="https://www.hudexchange.info/programs/environmental-review/airport-hazards">https://www.hudexchange.info/programs/environmental-review/airport-hazards</a>
<b>Applicability:</b>	<b>All projects that will add density or number of people at a site located within Runway Clear Zones (areas immediately beyond the ends of a runway) of civil airports or Accident Potential Zones (area beyond the Clear Zone) of military airfields</b>
<b>Online Resource:</b>	<b>Airports in Arkansas</b> <a href="http://www.aircraft-charter-world.com/airports/northamerica/arkansas.htm">http://www.aircraft-charter-world.com/airports/northamerica/arkansas.htm</a>  <b>Airport Hazard Worksheet</b> <a href="https://www.hudexchange.info/resources/documents/Airport-Hazards-Worksheet.docx">https://www.hudexchange.info/resources/documents/Airport-Hazards-Worksheet.docx</a>
<b>Contacts:</b>	<b>Local Airports or Federal Aviation Administration (FAA); Operator exercising control over military airfield</b>

The purpose of this regulation is to curtail development in areas identified above which poses a significant risk of personal injury and property damage from aircraft accidents. To assess such risk, projects located within a Runway Clear Zone of a civil airport or the

Accident Potential Zones of a military airfield must be reviewed to ensure that they will not pose such danger to the proposed project.

Because most CDBG projects will not be located near commercial or military airports, or are not applicable as listed in 24 CFR 51.302, it is highly unlikely that this requirement will apply; however, the grants manager will answer questions of applicability. AICUZ (Air Installations Compatible Use Zones) Maps from the affected airports/airfields or civil airport maps from the FAA will indicate if the project is in such a zone.

#### 4. Toxic Chemicals and Radioactive Materials

<b>Citations:</b>	<b>24 CFR 58.5(i)</b>
<b>Applicability:</b>	<b>All projects involving purchase, renovation or rehabilitation of buildings or property</b>

It is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous material, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination at or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the above-listed hazards. Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary. Typically, this refers to a Phase 1 study conducted under the most recent version of the ADTM standards. For small projects, a site visit and review of past uses can suffice.

### D. OTHER/STATE & LOCAL REQUIREMENTS

The above discussion of environmental regulations and laws is a general overview of requirements generally applicable to most CDBG projects. Many of the above acts have been supplemented to, or amended by, subsequent legislation too numerous to discuss here. Additionally, there are federal and state laws that will require a specific applicability determination on a project-by-project basis. For example, projects disturbing more than five acres must obtain a storm-water permit from ADEQ. These requirements shown here are required by the AEDC in addition to the HUD requirements listed above.

This section also covers other federal requirements that are not discussed in any other portion of the Administrative Procedures Manual, such as Lead Based Paint and Asbestos Abatement.

#### 1. Solid Waste Disposal

<b>Legislation:</b>	<b>Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901-6987</b>
<b>Citations:</b>	<b>40 CFR 240-265</b>
<b>Applicability</b>	<b>Any activity generating solid waste that will require a disposal permit</b>
<b>Contact Agency:</b>	<b>Arkansas Department of Environmental Quality Solid Waste Management Division 5301 Northshore Drive North Little Rock, Arkansas 72118-5317 (501) 682-0600</b>

Any projects generating solid waste that will require permitted disposal methods must obtain any required permits from the ADEQ Solid Waste Management Division. Copies of all applicable permits must be submitted to the Arkansas Economic Development Commission for review.

## 2. Lead Based Paint

<b>Legislation:</b>	<b>Lead Based Paint Hazard Elimination</b>
<b>Citations:</b>	<b>24 CFR 35, and Sections 1012 and 1013 of the Residential Lead-based Paint Hazard Reduction Act of 1992; Arkansas Pollution Control and Ecology Commission <u>Regulation 25 (PDF File)</u> (the Arkansas-Lead-based Paint-hazard Regulation)</b>
<b>Applicability</b>	<b>All rehabilitation projects involving buildings constructed before 1978 where children below the age of 6 and/or pregnant women will be present</b>
<b>Online Resource</b>	<b><a href="http://www.healthy.arkansas.gov">http://www.healthy.arkansas.gov</a></b>
<b>Contact Agency:</b>	<b>Arkansas Department of Health Lead-Based Paint Program 4815 West Markham, Slot 32 Little Rock, Arkansas 72205-3867 (501) 671-1549</b>

The ingestion or inhalation of lead dust, particularly by pre-school children, has been determined to be a cause of significant illness and occasional death. Determination of the presence of lead is made by analysis of blood levels. Levels greater than 5 millionths of a gram of lead per deciliter of blood have been determined as excessive.

All projects involving housing rehabilitation, child care and public health must test existing structures built before 1978 for the presence of lead. Whenever positive test results are found, appropriate mitigation actions including abatement or encapsulation must be conducted.

Note: Anyone conducting lead-based paint inspections or risk assessments in homes

built before 1978 or child-occupied facilities must be certified and employed by a licensed firm. To locate a qualified inspector or risk assessor, visit the Arkansas Department of Health website [www.healthy.arkansas.gov](http://www.healthy.arkansas.gov).

Note: In the event that abatement is done, a notice of intent must be filed with the Arkansas Department of Health 10 days prior to start of work and at the conclusion of work.

Requirements for the treatment of lead based paint depend on the level of Federal assistance.

- o Requirements for properties receiving up to and including \$5,000 of Federal Assistance
  - Test paint or presume lead based paint for surfaces likely to be disturbed
  - Repair of disturbed paint
  - Safe Work Practices
  - Clearance of worksite
  - Notice to occupants
  
- o Requirements for properties receiving more than \$5,000 up to and including \$25,000 of Federal assistance
  - Paint testing or presume lead based paint of disturbed surfaces- not lead based paint inspection
  - Risk assessment or standard treatments
  - Interim controls and Lead Safe Work Practices (HUD training)
  - Clearance of unit or worksite if contained
  - Notice to occupants
  
- o Requirements for properties receiving more than \$25,000 of Federal assistance
  - Paint testing or presume lead based paint
  - Risk Assessment
  - Abatement of lead based paint hazards (abatement certification)
  - Safe Work Practices
  - Clearance of Unit
  - Notice to occupants

Additional guidance regarding lead-based paint can be obtained from a grants manager.

### 3. Asbestos Identification and Abatement

<b>Legislation:</b>	<b>Asbestos Identification and Abatement</b>
<b>Citations:</b>	<b>The Clean Air Act of 1972, as amended; 40 CFR 61, dated November 20, 1990, as amended; Arkansas Asbestos Abatement Regulation (Section 3 of Act 531 of 1987); Arkansas Pollution Control and Ecology Commission <u>Regulation 21</u> (<i>PDF File</i>) (the Arkansas Asbestos Abatement)</b>
<b>Applicability</b>	<b>All projects involving the rehabilitation of buildings</b>

<b>Online Resource</b>	<a href="http://www.adeg.state.ar.us/air/asb_lead/asbestos.htm">http://www.adeg.state.ar.us/air/asb_lead/asbestos.htm</a>
<b>Contact Agency:</b>	<b>Arkansas Department of Environmental Quality Air Division-Asbestos/Lead Branch 5301 Northshore Drive North Little Rock, Arkansas 72118-5317 (501) 682-0718</b>

All projects involving the rehabilitation of existing buildings or structures must be free of friable asbestos. Testing by a state-certified asbestos testing company or individual for the presence of friable asbestos must be conducted before a CDBG grant can be executed. Because of the expense involved in asbestos abatement, it is the policy of the Arkansas Economic Development Commission to refrain from rehabilitation activities in asbestos-present buildings unless there is no other practical alternative. All persons conducting asbestos tests and involved in mitigation of asbestos must be licensed by the ADEQ in accordance with Act 531 of 1987, the Asbestos Contractor Licensing Act. Because asbestos testing must be conducted prior to grant execution, these costs are ineligible for grant reimbursement. Any questions regarding asbestos detection and abatement must be referred to the grants manager prior to grant approval.

#### **4. Arkansas Department of Parks & Tourism**

In accordance with an Interagency Agreement between the Arkansas Department of Parks & Tourism and the Arkansas Economic Development Commission, grantees must notify the Arkansas Department of Parks & Tourism in writing of the project to ensure that none of the project activities will be located within the confines of a state park or other park assisted with federal funds.

Comment letters may be mailed to:  
Arkansas Department of Parks & Tourism  
Outdoor Recreation Grants Program  
Attn: Environmental Planner  
1 Capitol Mall, 4A-900  
Little Rock, AR 72201  
(501) 682-6946

#### **5. Forestry**

Projects located near state or national forests must be reviewed  
Arkansas Forestry Commission  
#1 Natural Resources Drive  
Little Rock AR 72205  
(501) 296-1940

### **III. ENVIRONMENTAL REVIEW PROCESS**

#### **A. Initiating the Environmental Review Process**

The environmental review process cannot begin until the grant is executed or a request-to-incur-cost letter has been approved by the Arkansas Economic Development Commission, if the grantee intends to be reimbursed for costs associated with the environmental review process.

#### **B. Certifying Officer**

In accordance with 24 CFR 58.12-13, recipients of CDBG funds must assume responsibility for conducting environmental reviews. Accordingly, the chief executive officer of the grantee will be the individual who must certify compliance with environmental regulations (as "certifying officer") when requesting that funds be released by the Arkansas Economic Development Commission for the project. Grantees may, however, designate someone other than the chief executive officer to serve as certifying official through an official authorizing process. This person must have legal capacity to represent the grantee and execute the request for release of funds. The grantee must formally designate this individual in writing (Form 20), Designation of Environmental Review Compliance Liaison and submit this designation letter to the Arkansas Economic Development Commission as part of the ERR.

#### **C. Environmental Review Compliance Liaison**

For most projects, the Chief Executive Officer will select an individual to conduct general environmental review procedures, including reviewing maps, reports, and other sources of information; contacting comment, contact, or review agencies or individuals; and preparing environmental review documents. This person will also act as the liaison between the City or County, the engineer or architect, regulatory agencies, the Arkansas Economic Development Commission, other funding agencies, etc.

The individual named as the environmental review compliance liaison who has not previously conducted an environmental review must contact the grants division to schedule training, which must be completed prior to initiating any environmental activities. The Arkansas Economic Development Commission reserves the right to refuse the Chief Executive Officer's designation.

#### **D. Establishing the Environmental Review Record**

The first environmental review step is to prepare a brief written summary, or "aggregation," of **all** anticipated project activities. This summary should state the purpose and need for the project and discuss selected alternatives, if known. An area map of the environment that will potentially be affected by the project must also be attached to this letter. This information shall be sent to all applicable review agencies and interested parties during the environmental review process.

## E. Determining the Type of Environmental Review

Depending upon the scope of the project, grantees must conduct their environmental review process based upon one of three levels of compliance with 24 CFR 58. In accordance with these categories, all projects will be either

- **Exempt** from environmental review measures;
- **Categorically excluded** from NEPA requirements;
- Subject to an **Environmental Assessment**; or
- Subject to an **Environmental Impact Statement**.

Each of these processes is discussed in detail below:

### 1. Exempt

The exempt activities listed below per 24 CFR 58.34(a) do not have to comply with environmental review requirements of NEPA or "other" environmental laws and authorities except for those specified by 24 CFR 58.6

- Environmental and other studies, resource identification, and the development of plans and strategies
- Information and financial services
- Administrative and management activities
- Public services that will not have a physical impact or result in any physical change, 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
- Inspections and testing of properties for hazards or defects
- Purchase of insurance
- Engineering or design costs
- Technical assistance and training
- Purchase of tools
- 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
- Payment of principal and interest on loans made or obligation guaranteed by HUD
- Any of the categorical exclusions listed in 58.35(a) provided that there are no circumstances that require compliance with any other Federal laws and authorities cited in 58.5

Grantees who have determined that their project is exempt from environmental review requirements must submit a Finding of Exemption Determination (Form 21) and a Compliance with 24 CFR 58.6 (Form 27) to the Arkansas Economic

Development Commission documenting applicable reference to 24 CFR 58.34(a), and specific exempt activities. The grants division will review the exempt determination and, if approved, issue a letter permitting drawdown of CDBG funds. Projects that do not meet these exemption requirements will be instructed to complete an environmental review as a categorically excluded project or prepare an environmental assessment, as applicable. Neither a Statutory Checklist nor a Request for Release of Funds is necessary for these projects.

## **2. Categorically Excluded**

Projects that are categorically excluded do not have to comply with NEPA requirements; however, requirements of the other environmental laws and authorities (Section II. B) will apply if the project is subject to requirements listed at 24 CFR 58.5. Other categorically excluded activities will be handled similarly to exempt activities described above. All categorically excluded projects will be subject to statutes and regulations listed at 24 CFR 58.6. Part 58.6 compliance must be demonstrated. The following shows the types of activities that are classified within the two different categorical exclusion categories.

### **Categorically excluded projects, which are not subject to 24 CFR 58.5, as defined in 24 CFR 58.35(b) include:**

- 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;
- Operation 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 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 transfer of title;
- 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;
- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under Sec. 58.47.

### **Categorically excluded projects (as defined in 24 CFR 58.35), that may be**

**subject to requirements listed at 24 CFR 58.5(a), include:**

- 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);
- Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons;
- Rehabilitation of buildings and improvements when the following conditions are met:
  - Building with one to four units for residential use: density is not increased beyond four units, land use is not changed, and footprint of building is not increased in a floodplain or wetland;
  - Multifamily residential buildings: unit density is not changed more than 20 percent, land use does not change from residential to non-residential, and estimated cost of rehabilitation is less than 75 percent of total estimated cost of replacement after rehabilitation;
  - Non-residential structures, including commercial, industrial and public buildings: facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent, and land use does not change, such as from non-residential to residential, commercial to industrial, or from one industrial use to another;
- An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or  
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.
- Acquisition, (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided the structure or land acquired, financed, or disposed of will be retained for the same use.

**Compliance Measures for Categorically Excluded Projects**

After determining that the project is categorically excluded and not subject to 24 CFR 58.5, a Finding of Categorical Exclusion Determination (Form 22) and a Compliance with 24 CFR 58.6 (Form 27) must be prepared and identify specific excluded activities. If the grantee is concerned about mitigating factors that may complicate this determination, communication with the grants division's grants manager is suggested. No NOI/RROF public notice is needed for these projects.

Compliance with other laws and regulations must be documented by completing the Statutory Checklist (Form 23) only after determining that the project is categorically excluded and subject to 24 CFR 58.5. This checklist lists each of the compliance areas discussed in Section II. B, C, and D above, and asks the

environmental review officer to indicate whether or not particular laws are applicable to the project. If consultation or review is required, grantees must send the project information defined in Section III. C. above to the applicable review agencies. Any comments, questions or concerns must be fully addressed in writing by the grantee to the satisfaction of the applicable review agency. The Arkansas Economic Development Commission cannot approve the project if the environmental review officer fails to notify required agencies or satisfactorily respond to review comments. All compliance documentation, including agency correspondence and review comments, must be filed in the ERR.

If after the above process a project does not convert to exempt because the Statutory Checklist indicates that compliance with a Federal law, regulation or statute is required, a Notice of Intent to Request Release of Funds (NOI/RROF) (Form 25) must be published at least once in a local newspaper of general circulation within the grantee's jurisdiction for projects determined to be categorically excluded but subject to 24CFR 58.5. Proof of publication of this notice must be submitted with the ERR. Public comments must be accepted for seven days after the date of this publication. Upon expiration of the seven-day comment period, submit all documents discussed above, in addition to a Request for Release of Funds and Certification (Form 26) to the Arkansas Economic Development Commission.

The grants division will allow 15 days for objections to the NOI/RROF, and then will issue an Environmental Review Clearance Letter to the grantee which may then draw down funds for project activities.

### **3. Environmental Assessment**

If the activity is neither exempt nor categorically excluded, then the grantee must prepare an environmental assessment in accordance with the process below. All projects requiring an environment assessment must comply with NEPA and other laws.

- Compliance with other laws and regulations must be documented by completing the Statutory Checklist (Form 24) as it applies to the project. This checklist lists each of the major laws discussed in Section II. B. above and asks the environmental reviewer to indicate whether or not particular laws are applicable to the project. If consultation or review is required, Grantees must send the project information to the applicable review agencies. Any comments, questions or concerns must be fully addressed in writing by the grantee to the satisfaction of the applicable review agency. Failure to notify required agencies or satisfactorily respond to review comments will result in the Arkansas Economic Development Commission environmental review approval delays. All compliance documentation, including agency correspondence and review comments, must be filed in the ERR.
- The Environmental Assessment Checklist portion of the Environmental Clearance Worksheet (Form 28) must be completed according to the same process as defined for completion of the Statutory Checklist.
- If no adverse comments are received, the grantee must prepare and publish

a Finding of No Significant Impact (FONSI) (Form 29) and Notice of Intent to Request Release of Funds (NOI/RROF) (Form 25) separately or concurrently as a Combined Notice (Form 30) at least once in a local newspaper of general circulation within the grantee's jurisdiction. The FONSI shall be distributed to interested parties at this time in accordance with (Form 30). Public comments must be accepted for 15 days after the final date of publication. Upon expiration(s) of the 15 day comment period(s), submit proof of publication of the Combined or individual notices, a Request for Release of Funds and Certification (Form 26) and all other documents discussed above to the Grants division. The FONSI and the NOI/RROF may be published at the same time, as a Combined Notice, but may be published separately. If combined, the notice must clearly indicate that it is intended to meet two separate procedural requirements and ask that comments be specific to the NOI/RROF or FONSI.

- Once the RROF is received, the Arkansas Economic Development Commission will allow 15 days for objections to the NOI/RROF and FONSI or combined notice. The grants division will consider only objections that pertain to those matters listed under 24 CFR Part 58.75. If no comments are received, the grants division will issue an Environmental Review Clearance Letter after the 15 days. Grantees may then draw down funds for project activities.

The timetables below should be followed to ensure sufficient review time:

**Timetable for Combined NOI/RROF/FONSI Notice**

- Day 1 Combined notice is published in the local jurisdiction's newspaper
- Day 2 First day of 15-day comment period begins
- Day 16 Last day of 15-day comment period
- Day 17 Sign certification and mail with ERR documents, public notice, and proof of publication to the grants division
- Day 18 The grants division receives ERR packet
- Day 19 First day of the grants division's 15-day comment period begins
- Day 33 Last day of 15-day the grants division's comment period
- Day 34 The grants division issues Environmental Review Clearance Letter or comments for grantee's resolution

**Timetable for NOI/RROF Notice (If published separately from FONSI or as required for categorically excluded projects subject to part 58.5 that do not convert to exempt)**

- Day 1 NOI/RROF notice published in the local jurisdiction's newspaper
- Day 2 First day of 7-day comment period begins
- Day 8 Last day of 7-day comment period
- Day 9 Sign certification and mail with ERR, public notice, and proof of publication to the grants division
- Day 10 The grants division receives ERR packet
- Day 11 First day of 15-day the grants division's comment period begins
- Day 25 Last day of 15-day grants division comment period
- Day 26 The grants division approves/disapproves Request for Release of Funds

**Timetable for FONSI Notice (If published separately from NOI/RROF)** (*See Timetable for Combined NOI/RROF/FONSI Notice and substitute FONSI for NOI/RROF/FONSI.*)

FONSI must be re-evaluated when:

- An amendment to the project is proposed;
- New circumstances and environmental conditions have arisen during implementation; or
- An alternative not considered in the original environmental assessment is selected,

The re-evaluation will determine whether or not the FONSI is still valid. If valid, but data or conditions have changed, the original FONSI must be amended and the ERR updated. If the FONSI is no longer valid, the grantee must notify the grants division and prepare a new environmental assessment. If it is determined that the project will have a significant impact on the environment, then the grantee must prepare an environmental impact statement (EIS).

#### **4. Preparing an Environmental Impact Statement (EIS)**

If the environmental assessment indicates that the project may significantly affect the quality of the human environment, an EIS, in accordance with 40 CFR 1502 and 24 CFR 58.37, will be required. **Grantees should *immediately* contact the grants division whenever an EIS is required.**

Examples of project activities which require preparation of an EIS include:

- a. Construction, removal, demolition, conversion or substantial rehabilitation of 2500 or more housing units
- b. Providing sites/infrastructure for 2500 or more housing units, hospital beds or nursing homes, etc.
- c. Activities where findings are made after or during the completion of the environmental assessment that the action may significantly affect the quality of the human environment

Because few projects, if any, will require an EIS, details regarding EIS preparation will not be listed here, but will be provided to grantees as necessary.

#### **5. Responding to Comments**

Grantees should be cognizant of the following information when responding to public comments:

- All responsive public comments must be addressed in writing by the grantee
- All comments should be responded to in a timely manner before submitting the ERR to the grants division
- All release of information is subject to the Freedom of Information Act

#### IV. ENVIRONMENTAL REVIEW POLICIES

- A. The Arkansas Economic Development Commission's major responsibility is to provide technical assistance to and oversight of grantees' compliance with NEPA and other federal laws per 24 CFR 58.18(a) and (b).
- B. No funds shall be released by the grants division until the environmental review process is complete and a clearance letter has been received from the grants division.
- C. Grantees should allow at least 30 days for agencies to respond to notification letters.
- D. Projects that are exempt from NEPA and "other" laws must still comply with 24 CFR 58.6.
- E. Any structure built with CDBG funds must be at least one foot above the 100-year floodplain.
- F. If, during construction, events impacting environmental regulations are found, e.g., discovering archaeological remains, work in the affected area must be suspended until consultation with the applicable review agency produces acceptable mitigation measures.