

## **Environmental Changes within the 2016 MAP Guide**

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### **Chapter 9 Exclusions**

- Section 9.1.A.4: Projects to be refinanced or purchased under Section 223(f) and some substantial rehabilitation projects are categorically excluded from National Environmental Policy Act (NEPA) compliance. Therefore, only Part A of the Form HUD-4128 is required. Projects must still comply with Contamination Analysis and with Lead, Asbestos and Radon requirements. Nuisances and hazards such as pipelines, fall hazards and oil gas wells must also still be evaluated.
- Section 9.1.A.5: “Refinancing of HUD-insured mortgages that will not allow new construction or rehab, nor result in any physical impacts or changes except for *routine maintenance*” is categorically excluded from the Environmental Assessment requirements of the NEPA and does not require compliance with the Federal laws and authorities specified at 24 CFR 50.4, other than flood insurance requirements.
  - Currently HUD insured Section 223(f) and 223(a)(7) refinancing transactions that meet these criteria do not require an environmental review.

### **What is Routine Maintenance?**

- Per a HUD Memo dated February 8, 2016, titled “Guidance for Categorizing an Activity as Maintenance for Compliance with HUD’s Environmental Regulations, 24 CFR Parts 50 and 58,” (which superseded the March 28, 2006) “maintenance activities slow or halt deterioration of a building and do not materially add to its value or adapt it to new uses. Maintenance of a building feature or system requires periodic replacement of individual component parts that are subject to normal wear and tear.” General examples of maintenance activities for environmental review purposes:
  1. Cleaning activities;
  2. Protective or preventative measures to keep a building, its systems, and its grounds in working order;
  3. Replacement of appliances that are not permanently affixed to the building;

4. Periodic replacement of a limited number of component parts of a building feature or system that are subject to normal wear and tear; and,
5. Replacement of a damaged or malfunctioning component part of a building feature or system. (Replacement of all or most parts or an entire system is not maintenance.)

The memo also includes a Table for additional examples of maintenance activities versus rehabilitation activities. Please note that most projects do not fit into this exception and you should contact the reviewing HUD office to determine the level of Environmental Review required.

### **Initial Contact**

- Includes Concept Meetings, pre-application or application submission, or other meetings or correspondence with HUD or with a lender for the purpose of preparing an application for FHA multifamily mortgage insurance.
- NO action shall be taken which would:
  1. Have an adverse environmental impact;
  2. Limit the choice of reasonable alternatives; or,
  3. Prejudice the ultimate decision on the proposal.
- Think modification of a wetland or actions that adversely affect a historic property.

### **Section 9.5: Environmental Report**

- SHPO Consultation – 223(f) refinance transactions that will not allow rehabilitation nor result in any physical impacts or changes except for routine maintenance have “no potential to cause effect” to historic properties.
  - Anticipatory demolition is not allowed to circumvent the Section 106 process.
- THPO & FWS Consultation – HUD will carry out tribal and THPO consultations. HUD will consult with the FWS and National Marine Fisheries Service for projects that may affect an endangered or threatened species or its habitat.
- Floodplain Management –
  - Must use the most stringent, available mapping.
  - Critical actions are discussed throughout.

- A CLOMA or CLOMR removing the entire site from the applicable floodplain will negate the need to complete the 8 Step Decision Making Process for new construction and substantial improvement.
  - If a CLOMA or CLOMR cannot be obtained, the 8 Step Decision Making Process shall require that the lowest floor of new construction be elevated at or above the Base Flood Elevation, plus one foot of freeboard.
- Wetlands – under local or state jurisdiction are subject to state or local review as appropriate. However, compliance is not a substitute for the 8 Step Decision Making Process.
- Noise – New construction or conversions of existing structures with exterior unacceptable noise levels (> 75 dB) are prohibited unless:
  - An Environmental Impact Statement (EIS) is prepared; or,
  - If noise is the only environmental issue and no outdoor sensitive activity will take place on the site, a request for a waiver of the EIS can be submitted to the Assistant Secretary for Community Planning and Development by the Regional Office.

For rehabilitation projects that do not require noise analysis and attenuation, HUD will encourage appropriate noise attenuation measures for inclusion in the property alteration.

- Environmental Justice – Gaining more traction and becoming a larger HUD focus.
- Radon (supersedes ML 2013-07)
- Pipelines – Reference for equations and methodology to calculate acceptable separation from high pressure pipelines transferring flammable and combustible liquids and gases is the final report from ICF International, September 17, 2012

### **Items to Consider**

- For refinances with Level 2/3 repairs built prior to 1978, more extensive evaluations for Asbestos (screening vs. NESHAP compliant) may be required
- If any new construction is being completed, then additional 4128 items could be triggered
  - Noise, 8 Step Decision Making Process, Acceptable Separation Distance calculations

- Environmental reporting requirements could be triggered for (a)(7)'s if they are more than routine maintenance

### **HUD Environmental Review Online System (HEROS)**

- HUD Office of Environment and Energy (OEE) has developed an online system for developing, documenting and managing environmental reviews for both Part 50 and Part 58 projects.
- Launched in spring 2014. Not mandatory.
- HEROS availability for Part 58:
  - CDBG
  - HOME
  - SHOP
- HEROS availability for Part 50:
  - CPD Programs
  - RAD
  - **Multifamily programs – When the 2016 revisions to the MAP Guide take effect on May 28, 2016, MF staff will be required to use HEROS to complete all environmental reviews prepared following the MAP Guide.**
  - PIH programs
- HEROS walks the User through each step of the environmental review process, including: defining a project, determining the level of review, performing the analysis, finalizing the review and updating completed reviews.
- Environmental Reviews are made publically available.

<https://www.hudexchange.info/environmental-review/heros/>

### **Choosing an Environmentally “Safe” Site**

- Make a visual inspection of the site for signs of:
  - Distressed Vegetation

- Vent or Fill Pipes
  - Dumped Materials
  - Fall Zone Hazards
  - Oil and Gas Wells/Pipelines
  - Flooding
  - Noise Sources – Adjacent Railroad or Interstate
  - Aboveground Storage Tanks
- Inquire about the past uses of the site to determine possible detrimental land uses.
- Evaluate adjoining property uses for possible detrimental land uses.