

requirements. Another commenter suggested eliminating the word “minimum” to avoid confusion that may be caused by the different interpretations of the word.

HUD Response: The Department was not persuaded to make changes to the proposed rule on this matter. The provision requires the minimum number of days for public comment periods. The rule does not require any longer comment period, but provides the responsible entity with the authority and flexibility to extend the number of days for public comment beyond the minimum number of days. The Department does not share the commenters’ view on the possible actions a court may take.

Comment: Proposed § 58.75 language should be revised to parallel the prohibition in § 58.22 so that the basis for an objection is clearly limited to projects that have an adverse environmental impact or limit the choice of reasonable alternatives. The commenters wrote that the proposed rule would allow objections on the basis of a recipient or other participant having incurred costs or committed funds even if there was no actual adverse environmental impact or no actual limitation on the choice of reasonable alternatives.

HUD Response: The final rule makes no change to the proposed rule on this matter. The objection in § 58.75(e) as stated in the proposed rule is similar to the current regulations, because the limitation on activities pending clearance applies to both HUD and non-HUD funds for HUD-assisted projects. In contrast, the reference in the last sentence of § 58.22(a) on limitations on actions that have an adverse environmental impact or limit the choice of reasonable alternatives is too restrictive to be repeated as a more general basis for objection in § 58.75, because the language applies only to limitation on the use of non-HUD funds. The basis for objection in proposed § 58.75(e) does not refer to *all* incurring of costs or commitment of funds, but specifically refers only to those commitments of funds, incurring of costs and undertakings “not authorized by this part.”

Comment: The commenter welcomes the proposed change that clarifies the categorical exclusions for (1) rehabilitation of one to four family units, and (2) individual actions on one to four family units.” The commenter wrote that the intent to identify the rehabilitation of 1–4 unit residential buildings within this exclusion is a welcome clarification, which codifies a practice HUD has endorsed for years.

The commenter wrote that it is not clear from the reading of the proposed language whether this means all rehabilitation of buildings for residential use (with one to four units) is categorically excluded, or whether rehabilitation of these units needs to be less than 75 percent of replacement value, as the current threshold is for multifamily dwellings (or meet some other threshold value). The commenter wants the **SUPPLEMENTARY INFORMATION** reference to “minor rehabilitation” clarified in the final rule.

HUD Response: The final rule is not changed in response to the comment. With respect to environmental review procedures for all rehabilitation of buildings for residential use (with one to four units), the final rule allows a categorical exclusion subject to § 58.5 except that an environmental assessment is required only in the following circumstances: (1) the density is increased beyond four units; (2) the land use is changed; (3) the footprint of the building is increased in a floodplain or in a wetland; or (4) there are extraordinary circumstances (§ 58.35(c)). Under the final rule, the limitation on rehabilitation costs to 75 percent of replacement value applies only to multifamily residential buildings and non-residential structures, and does not apply to rehabilitation of buildings for residential use (with one to four units).

The final rule replaces the following criterion contained in the proposed rule: “* * * the dwellings do not result from a conversion of use from a non-residential use” (proposed rule at §§ 50.20(a)(2)(i) and 58.35(a)(3)(i)) with a criterion that “the land use is not changed.” HUD wishes to clarify the application of the provisions regarding “change in land use” found in the final rule at § 50.20(a)(2)(ii)(B) and (iii)(B) and its counterpart in part 58 in the current regulations, redesignated in the final rule as §§ 58.35(a)(3)(ii)(B) and (iii)(B). As a condition of eligibility for this categorical exclusion, the proposed project or activity must meet the condition that there will be no change in land use. When one reads the “categorical exclusion” sections of parts 50 and 58, the existing land use of the property and not its future land use is always the threshold to be used for determining eligibility for categorical exclusion. Any conversion or “change in land use” made to an existing property is ineligible for a categorical exclusion for rehabilitation and a full environmental assessment is required. The environmental assessment itself focuses its evaluation primarily on the future land use of the property and the

prospective and potential impacts resulting from the proposed land use.

Comment: The final rule should clarify the terminology in §§ 58.35(a)(3)(i) and (4). One commenter wrote that using the two phrases, “single-family residential building” together with “one to four units” conflicts because standard planning terminology suggests that a single-family residential building is one family per building. This term should be changed to read “Single buildings for family residential use (with one to four units)”.

HUD Response: The final rule revises the phrase published in the proposed rule to read “a building for residential use (with one to four units)” in § 58.35(a)(3)(i) and its counterpart § 50.20(a)(2)(i). The rule removes from usage the phrase “one-to four-family dwelling” appearing in the current regulations at §§ 50.20(a)(3) and 58.35(a)(4). Generally, HUD considers five or more units within a residential building as multifamily housing, a term established for the internal administration of its mortgage insurance programs. Fewer than five units within a residential building are generally considered single-family housing. This explains the origins of the terms in HUD environmental and program regulations. The final rule replaces the term “one-to four-family dwelling” that is used in the current regulation.

Comment: The final rule should clarify the proposed language at §§ 58.35(a)(4)(i) and (ii) with respect to exclusion of an “individual action” on a one-to four-unit dwelling when there are no more than four dwelling units on any one site, whether in one or multiple buildings. According to the commenter, this particular categorical exclusion is unwieldy to apply in the field. A clear definition is needed regarding what an “individual action” is on a one-to four-family dwelling. The commenter asked the question, “Is it only new construction or new construction and substantial rehabilitation (depending on the intent of § 58.35(a)(3)(i))?” The commenter also wrote that the proposed language does not account for circumstances in a program of “scattered sites” where sites may be widely dispersed, but where there may be a limited number of homes that happen to be within 2,000 feet of each other. If the project is classified as categorically excluded, does the project sponsor have to guarantee that every site will be more than 2,000 feet apart? The commenter suggested adding the following language to § 58.35(a)(4)(ii) “or there are not more than four units within 2,000 feet of each other.”