

*HUD Response:* In response to this comment, the final rule amends the proposed rule language of the § 58.35(a)(4) and 50.20(a)(3) provision for “individual actions” by adding a cross-reference to the end of §§ 58.35(a)(4) and 50.20(a)(3) to exclude rehabilitation of a building for residential use (with one to four units) from the thresholds for individual actions. As discussed earlier, §§ 58.35(a)(4) and 50.20(a)(3) of the final rule will no longer apply to the rehabilitation of buildings for residential use (with one to four units), because the topic is covered under a new, separate provision at §§ 50.20(a)(2)(i) and 58.35(a)(3)(i) located with related rehabilitation thresholds for categorical exclusions pertaining to multifamily residential buildings and non-residential structures. Sections 58.35(a)(4) and 50.20(a)(3) of the final rule will continue to apply to all other types of individual actions (including, but not limited to, new construction, development, demolition, and acquisition, disposition, or refinancing regardless of future use) with respect to dwelling or housing units that meet the conditions in §§ 50.20(a)(3)(i) and (ii) and §§ 58.35(a)(4)(i) and (ii).

Although the 2000-foot standard was questioned, no other standards were suggested in any of the comments. The rationale for this threshold for an environmental assessment is based on the principle of aggregation and the need to examine the cumulative environmental effects (40 CFR 1508.7) of scattered site housing construction taking place in close proximity. This is consistent with the current provision in § 58.32, which calls for project aggregation of activities that are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.

*Comment:* The Environmental Protection Agency (EPA) requested that HUD encourage responsible entities to limit distribution of the Findings of No Significant Impact (FONSI) notices to EPA regional offices, and not to send copies to EPA Headquarters in Washington, DC. The EPA also made two recommendations: (1) That HUD’s formats for FONSI add provisions to improve the description of the project and a good map; and (2) that HUD clarify that the EPA may review HUD environmental assessments, but that EPA does not reach a determination on the grant application; however, EPA may provide its views on the environmental document to the responsible entity or HUD.

*HUD Response:* Section 58.43(a) of the current rule remains unchanged. However, in response to the EPA comment, HUD will incorporate in guidance addressed to HUD staff and program participants the following information: (1) When sending FONSI notices and Notices of Intent to Request the Release of Funds (NOI/RROF) to EPA, responsible entities are not to send copies to EPA Headquarters in Washington, DC, but only to regional offices of the EPA having jurisdiction over the responsible entity; (2) notices sent to EPA regional offices should include a full description and location of the project; and (3) responsible entities are discouraged from requesting that the EPA serve as a lead or cooperating agency in preparing environmental assessments and impact statements for HUD-assisted projects. The role of the EPA is not to prepare, but rather to evaluate and comment on these documents.

*Comment:* The EPA suggested that HUD further define the categorical exclusion in § 58.35(a)(3)(i) by adding the following language at the end of § 58.35(a)(3)(i): “and which exterior building dimensions are not increased in a floodplain or in a wetland.”

*HUD Response:* HUD agrees, but has substituted the wording “and the footprint of the building is not increased in a floodplain or in a wetland” in lieu of EPA suggested wording. The wording “and the footprint of the building is not increased in a floodplain or in a wetland” is added to the final regulation at § 58.35(a)(3)(i) for the environmental review of proposed rehabilitation of buildings for residential use (with one to four units). The added language serves as a threshold for requiring an environmental assessment so as to evaluate and alleviate the environmental effects in cases where rehabilitation assistance is proposed for expanding the footprint of buildings for residential use (with one to four units) where such expansion is located within or would enter the floodplain or wetland. The added language is directly relevant in the case of minor repairs or improvements to one-to four-family properties that are currently excluded from HUD floodplain management decision-making procedures under 24 CFR 55.12(b)(2). The exclusion allowed at § 55.12(b)(2) does not apply to financial assistance for proposed rehabilitation of multifamily residential buildings and non-residential buildings. The exclusion is limited to “[f]inancial assistance for minor repairs or improvements on one-to four-family properties that do not meet the

thresholds for ‘substantial improvement’ under § 55.2(b)(8).”

*Comment:* Partially exempt projects in § 50.20 should be exempt from all federal environmental laws and should be moved to § 50.19. The commenter asserted that since these uses of federal funds involve no significant changes to structures that already exist, a presumption should apply that their repair or purchase cannot affect any federal environmental interest protected by federal law. The commenter said that compliance with the numerous laws listed in § 50.4 imposes a significant and costly administrative burden on Indian tribes that assume NEPA responsibilities. The commenter recommends moving to § 50.19 the categorical exclusions in §§ 50.20(a)(2) and (a)(4) when there is no change in the use of the structure, and revising § 50.19 to require compliance with the Historic Preservation Act only if the structure is over 50 years old.

*HUD Response:* The final rule makes no change to the proposed rule in response to this comment. First, HUD notes that part 58—not part 50—is applicable to Indian tribes that assume NEPA responsibilities. Under §§ 58.34 and 58.35(b), HUD has excluded from review those actions that by their nature do not trigger compliance requirements under NEPA and related authorities listed in § 58.5. However, environmental laws listed in § 50.4 and § 58.5 can apply to the actions listed in §§ 50.20(a)(2) and (4) and the comparable actions in §§ 58.35(a)(3) and (5). HUD lacks the authority to provide exemptions and exclusions from applicable statutory requirements and therefore cannot do what the commenter suggests under either part 50 or part 58. Compliance is mandatory whenever HUD funds are proposed for projects and activities subject to any of the related federal environmental laws and authorities cited in §§ 58.5, 58.6 and 50.4 “as applicable.” To the extent that HUD has authority, the rule provides relief in the case of categorical exclusions from the environmental assessment required under NEPA as allowed by the CEQ regulations. However, there are certain national objectives that each of the related federal environmental laws and authorities is designed to achieve at the project level through the support of federal financial assistance. The national objectives cover historic preservation, protection from toxic chemicals or radioactive materials, protection from flood hazards, protection of wetlands and coastal barrier resources, protection of endangered species, protection of sole