

Summary of Requirements for Construction Projects under ESSER I/II

34 CFR 75 Requirements

34 CFR 75.601 Applicant's assessment of environmental impact.

An applicant shall include with its application its assessment of the impact of the proposed construction on the quality of the environment in accordance with section 102(2)(C) of the [National Environmental Policy Act of 1969](#) and [Executive Order 11514 \(34 FR 4247\)](#).
(Authority: [20 U.S.C. 1221e-3](#) and [3474](#))

34 CFR 75.602 Preservation of historic sites must be described in the application.

(a) An applicant shall describe in its application the relationship of the proposed construction to and probable effect on any district, site, building, structure, or object that is: (1) Included in the National Register of Historic Places; or (2) Eligible under criteria established by the Secretary of Interior for inclusion in the National Register of Historic Places. CROSS REFERENCE: See 36 CFR part 60 for these criteria. (b) In deciding whether to make a grant, the Secretary considers: (1) The information provided by the applicant under paragraph (a) of this section; and (2) Any comments by the Advisory Council on Historic Preservation.

CROSS REFERENCE: See 36 CFR part 800, which provides for comments from the Council.
(Authority: [20 U.S.C. 1221e-3](#) and [3474](#))

34 CFR 75.603 Grantee's title to site.

A grantee must have or obtain a full title or other interest in the site, including right of access, that is sufficient to insure the grantee's undisturbed use and possession of the facilities for 50 years or the useful life of the facilities, whichever is longer.

(Authority: [20 U.S.C. 1221e-3](#) and [3474](#))

34 CFR 75.604 Availability of cost-sharing funds.

A grantee shall ensure that sufficient funds are available to meet any non-Federal share of the cost of constructing the facility.

(Authority: [20 U.S.C. 1221e-3](#) and [3474](#))

34 CFR 75.605 Beginning the construction.

(a) A grantee shall begin work on construction within a reasonable time after the grant for the construction is made. (b) Before construction is advertised or placed on the market for bidding, the grantee shall get approval by the Secretary of the final working drawings and specifications.

(Authority: 20 U.S.C. 1221e-3 and 3474)

34 CFR 75.606 Completing the construction.

(a) A grantee shall complete its construction within a reasonable time. (b) The grantee shall complete the construction in accordance with the application and approved drawings and specifications.

(Authority: 20 U.S.C. 1221e-3 and 3474)

34 CFR 75.607 General considerations in designing facilities and carrying out construction.

(a) A grantee shall insure that the construction is: (1) Functional; (2) Economical; and (3) Not elaborate in design or extravagant in the use of materials, compared with facilities of a similar type constructed in the State or other applicable geographic area.

(b) The grantee shall, in developing plans for the facilities, consider excellence of architecture and design and inclusion of works of art. The grantee may not spend more than one percent of the cost of the project on inclusion of works of art.

(Authority: [20 U.S.C. 1221e-3](#) and [3474](#))

34 CFR 75.608 Areas in the facilities for cultural activities.

A grantee may make reasonable provision, consistent with the other uses to be made of the facilities, for areas in the facilities that are adaptable for artistic and other cultural activities.

(Authority: [20 U.S.C. 1221e-3](#) and [3474](#)) [[57 FR 30339](#), July 8, 1992]

34 CFR 75.609 Comply with safety and health standards.

In planning for and designing facilities, a grantee shall observe:

(a) The standards under the [Occupational Safety and Health Act of 1970](#) ([Pub. L. 91-576](#)) (See [36 CFR part 1910](#)); and

(b) State and local codes, to the extent that they are more stringent.

(Authority: [20 U.S.C. 1221e-3](#) and [3474](#))

34 CFR 75.610 Access by the handicapped.

A grantee shall comply with the Federal regulations on access by the handicapped that apply to construction and alteration of facilities. These regulations are:

(b) For non-residential facilities - [41 CFR subpart 101-19.6](#).

(Authority: [20 U.S.C. 1221e-3](#) and [3474](#))

34 CFR 75.611 Avoidance of flood hazards.

In planning the construction, a grantee shall, in accordance with the provisions of [Executive Order 11988](#) of February 10, 1978 ([43 FR 6030](#)) and rules and regulations that may be issued by the Secretary to carry out those provisions:

(a) Evaluate flood hazards in connection with the construction; and

(b) As far as practicable, avoid uneconomic, hazardous, or unnecessary use of flood plains in connection with the construction.

(Authority: [20 U.S.C. 1221e-3](#) and [3474](#))

34 CFR 75.612 Supervision and inspection by the grantee.

A grantee shall maintain competent architectural engineering supervision and inspection at the construction site to insure that the work conforms to the approved drawings and specifications.

(Authority: [20 U.S.C. 1221e-3](#) and [3474](#))

34 CFR 75.613 Relocation assistance by the grantee.

A grantee is subject to the regulations on relocation assistance and real property acquisition in [34 CFR part 15](#).

(Authority: [20 U.S.C. 1221e-3](#) and [3474](#))

34 CFR 75.614 Grantee must have operational funds.

A grantee shall insure that, when construction is completed, sufficient funds will be available for effective operation and maintenance of the facilities.

(Authority: [20 U.S.C. 1221e-3](#) and [3474](#))

34 CFR 75.615 Operation and maintenance by the grantee.

A grantee shall operate and maintain the facilities in accordance with applicable Federal, State, and local requirements.

(Authority: [20 U.S.C. 1221e-3](#) and [3474](#))

34 CFR 75.616 Energy conservation.

(a) To the extent feasible, a grantee shall design and construct facilities to maximize the efficient use of energy.

(b) The following standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) are incorporated by reference in this section:

- (1) ASHRAE-90 A-1980 (Sections 1-9).
- (2) ASHRAE-90 B-1975 (Sections 10-11).
- (3) ASHRAE-90 C-1977 (Section 12).

Incorporation by reference of these provisions has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under [5 U.S.C. 552](#) (a) and [1 CFR part 51](#). The incorporated document is on file at the Department of Education, Grants and Contracts Service, rm. 3636 ROB-3, 400 Maryland Avenue, SW., Washington, DC 20202-4700 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go

to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

These standards may be obtained from the publication sales department at the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1791 Tullie Circle, NE., Atlanta, Georgia 30329.

(c) A grantee shall comply with ASHRAE standards listed in [paragraph \(b\)](#) of this section in designing and constructing facilities built with project funds.

(Authority: [20 U.S.C. 1221e-3](#) and [3474](#), [42 U.S.C. 8373\(b\)](#), and [E.O. 12185](#)) [[57 FR 30339](#), July 8, 1992, as amended at [69 FR 18803](#), Apr. 9, 2004]

2 CFR 200.326 Bonding requirements.

For construction or facility improvement [contracts](#) or sub [contracts](#) exceeding the [Simplified Acquisition Threshold](#), the [Federal awarding agency](#) or [pass-through entity](#) may accept the bonding [policy](#) and requirements of the [non-Federal entity](#) provided that the [Federal awarding agency](#) or [pass-through entity](#) has made a determination that the [Federal interest](#) is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the [contractor](#) for 100 percent of the [contract](#) price. A “performance bond” is one executed in connection with a [contract](#) to secure fulfillment of all the [contractor](#)'s requirements under such [contract](#).

(c) A payment bond on the part of the [contractor](#) for 100 percent of the [contract](#) price. A “payment bond” is one executed in connection with a [contract](#) to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the [contract](#).

Program Assurance Requirements (424D) (some of these are redundant to the above)

Comply with the requirements of the NHDOE with regard to the drafting, review and approval of construction plans and specifications.

Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the Federal assistance awarding agency or NHDOE.

Initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures. Comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

Comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327- 333) regarding labor standards for federally-assisted construction sub-agreements.

Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

Comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C.

§§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

Comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

Assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq).

Comply with the requirement that any facilities constructed under this program will be consistent with overall State construction plans and standards and with the requirements of Section 504 of the Rehabilitation Act of 1973 in order to ensure that the facilities are accessible to and usable by individuals with disabilities.

Fire Safety Requirements

Section Ed 321.13 - Fire Safety Requirements

(a) All construction of school facilities shall meet the requirements of the state fire code under Saf-C 6000. The drawings and specifications of public school construction shall be evaluated by the state fire marshal according to the state fire code. Pursuant to RSA 153, the state fire marshal shall judge the drawings and specifications according to other related parts and standards of the Life Safety Code under NFPA Doc. No. 101, and the state building code under RSA 155-A.

(b) The certificate of substantial completion shall not be issued to the construction contractor prior to receipt of a letter of approval of the design from the state fire marshal. (c) Variances for the provisions of Ed 321.13 may be granted by the state fire marshal in accordance with the provisions of Saf-C 6005.

N.H. Code Admin. R. Ed 321.13

#8265, eff 1-22-05; ss by #10363, eff 6-15-13