

categorical exclusion for rehabilitation of buildings for residential use (with one to four units) are modified in the final rule. The threshold that “the dwellings do not result from a conversion of use from a non-residential use” is revised in the final rule to read “the land use is not changed.” The threshold that “the footprint of the building is not increased in a floodplain or in a wetland” is added to the final rule.

The final rule updates the reference to the FHA Multifamily Housing Finance Agency Pilot Program by removing the word “Pilot” because the program is now a permanent program. The term “Pilot” appears in the current regulation and the proposed rule at § 58.2(a)(5)(vii) and (6).

The Department has decided not to adopt the revisions to 24 CFR 970.4 as published in the proposed rule, in favor of making a simple cross-reference to part 58. The Office of Public Housing Investments, an office under the Office of the Assistant Secretary for Public and Indian Housing, plans to cover the removed guidance in an internal notice dealing with demolition or disposition of public housing projects pending issuance of a broader amendment to part 970 itself.

## II. This Final Rule

This final rule follows publication of the June 26, 2002, proposed rule and takes into consideration the 64 public comments received on the proposed rule. The public comment period on the rule closed on August 26, 2002. Comments were received from a federal agency, local housing and community development authorities, housing professionals, an Indian housing authority, city and county governments, housing associations, home inspection services, and several private individuals. In accordance with the consultation provision of the CEQ regulations at 40 CFR 1507.3, HUD submitted for CEQ review and comment the proposed amendment to part 58. The final rule implements HUD’s responsibility to identify and regulate HUD-assisted activities subject to NEPA. Section 102 of NEPA requires that all agencies of the federal government identify and develop methods and procedures, in consultation with the CEQ, which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations.

In response to the public comments, the following revisions, summarized

here and discussed more fully in Part III, are made to the proposed rule.

Section 58.1(b)(10) is revised by adding the new program for Native Hawaiian Housing Block Grants authorized under title VIII of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with section 806 (25 U.S.C. 4226).

Section 58.2(a)(5)(ix) is revised by adding as a recipient, the Department of Hawaiian Home Lands with respect to NAHASDA assistance under § 58.1(b)(10).

Section 58.2(a)(7)(ii) is revised by adding as a responsible entity, the Department of Hawaiian Home Lands with respect to environmental responsibilities under NAHASDA, when the Department of Hawaiian Home Lands is the recipient.

Section 58.35(a)(3)(i) is revised to clarify the conditions for a categorical exclusion for rehabilitation proposed in the case of buildings for residential use (with one to four units). The conditions are that the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland. The effects of this provision are that: (1) It corrects in the current rule at § 58.35(a)(3) the apparent omission of the topic of “buildings for residential use (with one to four units)” by including an explicit reference to this topic in the listing for building rehabilitation activities, because the current listing cites categorical exclusions only for multifamily and non-residential buildings. Although under current regulations neither part 58 nor part 50 refers to the topic of rehabilitation proposed in the case of buildings for residential use (with one to four units), the topic was considered under part 58 as an “individual action,” whereas under part 50 it was covered under the generic topic “rehabilitation of structures.” The final rule removes this ambiguity; (2) it removes the proposed rule reference at § 58.35(a)(3)(i) to “dwellings do not result from a conversion of use from a non-residential use” and substitutes “the land use is not changed”; (3) it eliminates the need to perform environmental assessments by removing thresholds listed in the current regulations under both parts 50 and 58; (4) it adds a cross-reference within the individual actions criteria at §§ 58.35(a)(4) and 50.20(a)(3) to exclude rehabilitation of buildings for residential use (with one to four units) from the thresholds for individual actions; and (5) this categorical exclusion continues, as in the current

and proposed regulations, to be subject to the §§ 58.5 and 58.6 provisions. In addition, this rule amends § 50.20(a)(2) with identical language that applies when HUD itself performs the environmental review under part 50.

## III. Discussion of Public Comments Received on the June 26, 2002, Proposed Rule

*Comment:* HUD should mandate radon testing and remediation, if necessary, of every home, because the Department’s failure to enforce the environmental responsibilities required by the rule is contributing to thousands of preventable lung cancer deaths. Specifically, commenters noted that 24 CFR 50.3(i)(1) states HUD’s policy that all property proposed for use in HUD programs be free of hazardous materials and toxic substances, among other things, where a hazard could affect the health and safety of occupants. They stated that radon is a carcinogen, which can be inexpensively remediated, yet most home purchasers, in spite of the EPA recommendation, do not order a radon test.

Many commenters cited 24 CFR 50.3(i)(1) in arguing that HUD should enforce the regulation and mandate a radon test of residential property for it to qualify for a Department of Veterans Affairs (VA), Department of Housing and Urban Development (HUD), Federal National Mortgage Association (Fannie Mae), or Federal Home Loan Mortgage Corporation (Freddie Mac) mortgage. Commenters noted that the Government Sponsored Enterprises (GSEs) (regulated by HUD) are the largest source of housing finance in the country. They remarked that industry experts agree that once HUD imposes mandatory testing of radon hazards, the majority of primary market mortgage originators will follow suit.

*HUD Response:* After a careful review of the comments, the Department has decided not to revise the proposed rule. Mandatory testing of homes for radon hazards under HUD’s mortgage insurance programs for single-family home loans is outside the scope of this rulemaking. This rule deals primarily with HUD’s grant programs for which HUD’s environmental review responsibility is assumed by state, local, and tribal governments for compliance with NEPA and the related laws and authorities.

The Department would add that conforming § 58.5(i) in this final rule to the existing language in § 50.3(i)(1) signals its policy of establishing a uniform standard for dealing with toxic hazards in cases where an environmental review is required to