

comply with NEPA and/or the related laws and authorities cited at § 58.5. As stated above, a requirement for mandatory testing for radon hazards for single-family homes is not within the scope of this rule. Nonetheless, the new language in § 58.5 reflects HUD's policy that, regardless of whether the environmental reviews are performed by HUD or by the responsible entity, the same standards would be used. Further, the conforming provision requires that the environmental review of multifamily housing with five or more dwelling units (including leasing) and non-residential property, must include the evaluation of previous uses of the site and other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in § 58.5(i)(1). The provision requires that particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain or may have contained hazardous wastes. The new conforming provision would apply to addressing radon hazards within the context of the environmental review whenever it is known or suspected that such hazards exist.

The Department also notes that there is no HUD review or approval before the completion of construction or rehabilitation and the loan closing for single-family homes whose mortgages are endorsed by the FHA. Consequently, the program is excluded from environmental review regulations under part 50 (see § 50.19(b)(17)). However, environmental underwriting criteria for FHA mortgage insurance programs are listed elsewhere at 24 CFR 203.12(b), relating to "Builder's Certification of Plans, Specifications and Site" (Builder's Certification) for mortgage insurance on proposed or new construction of single-family homes. The Builder's Certification form covers "Other foreseeable hazards or adverse conditions." (See 24 CFR 203.12(b)(2)(vi)).

*Comment:* HUD should remove from the rule the language in part 58 that makes units of general local government, counties, and states responsible for environmental review of HOPE VI projects. The commenter recommended that HUD directly perform environmental review of HOPE VI projects and other projects undertaken by public housing agencies (PHAs) under the programs listed in § 58.1(b). The commenter stated that imposing environmental review responsibilities upon non-recipient

entities for such projects diverts limited administrative staff time not only to conduct the environmental review, but also to negotiate agreements with recipients regarding the environmental review work. The commenter noted that these agreements may need to be approved by one or more legislative bodies. The commenter also noted that the statutory authority under which HOPE VI is proposed to be added to part 58 does not require HUD to delegate environmental responsibilities to the non-recipient entities listed in § 58.2(a)(7).

*HUD Response:* The Department has carefully considered this comment, but declines to change the rule. Accordingly, the final rule is unchanged from the proposed rule on this issue. At this time, many more responsible entities perform environmental reviews for their own complex capital projects and have sufficient experience to be able to do so for other HUD-assisted recipients within their area. Where the responsible entity staff lacks time or skills, then services of consultants are recommended. Consultant support is also recommended in order to support certain kinds of technical environmental analysis.

Generally, negotiating agreements is an established operating practice and need not be viewed as a burden, but as an opportunity to partner. HUD expects responsible entities to reach out to partners and to readily negotiate agreements with public housing agencies and private non-profit organizations seeking environmental services of the responsible entity for their HUD-assisted project or activity. HUD understands that such agreements must comply with state and local laws and in some cases may need approval of the legislative body, as pointed out by respondents.

This rule is an environmental rule and therefore does not cover findings of consistency with the Consolidated Plan; however, such findings are required for the HOPE VI Program listed at 24 CFR 91.2(b)(12), Revitalization of Severely Distressed Public Housing. HUD has the discretion to perform environmental reviews, but such performance would be inconsistent with HUD's general direction to devolve this federal function for its grant programs to state, local, and tribal governments. HUD believes that effective environmental review and administration is best performed by the responsible entity. While HUD encourages units of general local government, counties, and states to perform environmental reviews for HOPE VI projects, such governments are not required to do so when they are not

the recipient of the HOPE VI assistance. HUD does not believe it advisable to prohibit any unit of a local government, county, or state from performing environmental reviews for PHAs under part 58 when many are willing to do so.

*Comment:* A commenter objected to the proposed change in §§ 58.1 and 58.2 that would make a governmental jurisdiction that is not providing the federal funding responsible for the environmental review for the assisted project. The commenter expressed concern that this rule change could force a certifying officer into court to defend a project in which the officer has no influence. The commenter asserted that effective environmental review and administration lies solely with the funding agency.

*HUD Response:* The final rule makes no change to the proposed rule in response to this comment. Generally, environmental litigation results from failure of the project managers to perform the requisite environmental review or to address environmental impacts satisfactorily. HUD believes that certifying officers, who are generally the top elected officials of the jurisdiction, are in a better position than the funding agency alone to guide and defend projects within their jurisdiction. The certifying officers live in their jurisdictions and are involved with governing their jurisdictions—including sitting on or appointing directors to boards of public housing agencies and private non-profit organizations. Responsible entities and their certifying officers, in performing environmental reviews under part 58, have no less authority than HUD under part 50. Either party is under the same legal duty to ensure full compliance with statutory and regulatory requirements for environmental quality irrespective of the type of HUD-assisted recipient, developer, or project.

HUD disagrees with the comment that effective environmental review and administration lies solely with the funding agency. HUD, as the funding agency, has a partnership role to play, but HUD partners with the local government that has jurisdiction and competency. At the project level, the responsible entity is the local government that "governs" by providing land use planning and consolidated planning; by permitting, through zoning, building, and building occupancy approvals for projects that are assisted by HUD; and by supplying infrastructure support for these projects. Thus, HUD believes the certifying officers and responsible entities are already involved with HUD-assisted projects.