

*Comment:* Some governmental jurisdictions may determine that under the § 58.5(i) standards, the potential legal or financial exposure is too high and would limit the range of activities they fund with CDBG and HOME funds. The commenter was of the opinion that property owners are unlikely to enter into purchase agreements that include contingencies allowing on-site testing of their property by a prospective purchaser or environmental reviewer to determine the presence or absence of toxic contamination.

*HUD Response:* Among HUD's missions is promotion of the national goal that every American family be able to afford a decent home in a suitable environment, and HUD's CDBG and HOME programs support that national goal. Accordingly, we disagree with the commenter's opinion that the potential legal or financial exposure is too high and would limit the range of activities that local governments fund with CDBG and HOME funds, should HUD implement § 58.5(i). That section simply conforms part 58 with identical policy at § 50.3(i), which, since 1996, HUD itself applies when HUD staff perform environmental reviews under part 50.

HUD does not share the commenter's opinion that property owners are unlikely to enter into purchase agreements that include contingencies allowing on-site testing of their property by a prospective purchaser or environmental reviewer to determine the presence or absence of toxic contamination for a HUD-assisted project. The federal subsidy is a significant incentive to ensure the cooperation of most property owners in this matter.

*Comment:* A commenter questioned the rationale for not requiring site evaluation for residential buildings with fewer than five units. The commenter wrote that a contaminated site would present environmental issues regardless of the number of people who will be served by the site.

*HUD Response:* The final rule makes no change to the proposed rule, but in response to the comment, HUD provides this clarification. The final rule renumbers the section in question. Section 58.5(i)(2)(i) of the final rule applies to all properties (*i.e.*, "covered" properties) that are being proposed for use in HUD programs covered under § 58.1(b) (*i.e.*, "covered" programs). Section 58.5(i)(2)(ii) applies specifically to multifamily residential properties and to non-residential properties proposed for use in "covered" programs; and it requires an evaluation of previous uses of the site or other evidence of contamination on or near

the site. HUD clarifies that the language of §§ 58.5(i)(2)(iii) and (iv) is not limited in its application to multifamily residential properties and to non-residential properties, but applies to all "covered" properties, including buildings for residential use (with one to four units). The language of § 58.5(i)(2)(iii) 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 language of § 58.5(i)(2)(iv) requires the responsible entity to use current techniques by qualified professionals to undertake investigations determined necessary. In addition, HUD clarifies that all "covered" properties may include those properties subject to a categorical exclusion under § 58.35(b) in cases of extraordinary circumstances in accordance with § 58.35(c).

*Comment:* Not enough emphasis is made in the proposed rule on the high level of priority that should be placed on expediting environmental reviews, since the environmental review process can be a lengthy one that slows the funding and expending of HUD grant funds. The commenter suggested that the rule provide positive incentives to expedite the environmental review process as HUD adds new programs and entities to part 58.

*HUD Response:* The most significant incentive is intrinsic in the current part 58 regulations, because delays can be prevented by the recipient responsible entity since the calendar and pace of performing the environmental procedures is under the control of the responsible entity itself. With respect to non-recipient responsible entities, the final rule makes no change to the proposed rule to provide additional incentives to expedite the environmental review process as HUD adds new programs and entities to part 58. HUD believes that the current regulations provide the following incentives: (1) § 58.23 provides that the environmental review costs are eligible costs to the extent allowable under the HUD assistance program regulations. The assurance of payment for work performed is an incentive in expediting environmental reviews. Also, §§ 58.34(a)(1) and (3), respectively, exempt from environmental review procedures both "environmental and other studies" as well as "administrative and management activities." This exemption extends to the costs of environmental consultants and/or payments to local governments for this service; (2) The regulations

provide an opportunity for closer partnering arrangements among all local partners providing housing and economic opportunities to achieve the responsible entity's Consolidated Plan targets. HUD's local partners include local governments, public housing agencies, private non-profit and for-profit organizations. Such local arrangements should provide for time-efficient management of environmental reviews; (3) The regulations provide policy guidance to private non-profit organizations and public housing agencies requiring them to supply the responsible entity with all available, relevant information necessary for the responsible entity to perform for each property any environmental review required under part 58; (4) This rulemaking would expedite environmental reviews by simplifying the provision that provides a categorical exclusion for rehabilitation assistance in the case of a building for residential use (with one or four units) and a categorical exclusion for the approval of supplemental assistance to a project previously approved under this part; and (5) Often overlooked is the provision in the CEQ regulations that requires responsible entities to integrate the NEPA process with other planning "at the earliest possible time" to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts (40 CFR 1501.2).

Section 58.30(b) states that the environmental review process should begin as soon as a recipient determines the projected use of HUD assistance. The prohibition on commencing choice-limiting activities under § 58.22 and CEQ regulations at 40 CFR 1506.1 until after the environmental review process is completed may be an additional incentive to expedite the review.

*Comment:* The term "any participant in the development process" is not defined in the rule. The commenter observed that proposed § 58.22 would prohibit any participant in the development process from committing non-HUD funds or undertaking an activity on a project that would have an adverse environmental impact or limit the choice of reasonable alternatives prior to release of funds. The commenter recommended limiting the application of the prohibition to subrecipients and adding the cited term to the definition of subrecipient in § 58.2(a)(5).

*HUD Response:* The Department did not incorporate this recommendation in the final rule. HUD does not believe that the phrase "any participant in the development process" needs further