

continued use to preserve the floodplain;

(7) An action for interim assistance, assistance under the section 232(i) Fire Safety Equipment Loan Insurance Program, or emergency activities involving imminent threats to health and safety, and limited to necessary protection, repair or restoration activities to control the imminent risk or damage;

(8) HUD's approval of financial assistance for a project on any site in a floodplain for which FEMA has issued:

(i) A final Letter of Map Amendment (LOMA) or final Letter of Map Revision (LOMR) that removed the property from a FEMA-designated floodplain location; or

(ii) A conditional LOMA or conditional LOMR if the HUD approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;

(9) HUD's acceptance of a housing subdivision approval action by the Department of Veterans Affairs or Farmers Home Administration in accordance with section 535 of the Housing Act of 1949 (42 U.S.C. 1490o);

(10) An action that was, on May 23, 1994, already approved by HUD (or a grant recipient subject to 24 CFR part 58) and is being implemented (unless approval is requested for a new reviewable action), provided that §§ 55.21 and 55.22 apply where the covered transactions under those sections have not yet occurred, and that any hazard minimization measures required by HUD (or a grant recipient subject to 24 CFR part 58) under its implementation of Executive Order 11988 before May 23, 1994 shall be completed;

(11) Issuance or use of Housing Vouchers, Certificates under the Section 8 Existing Housing Program, or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (*i.e.*, do not involve site-specific subsidies); and

(12) Secondary mortgage operations of the Government National Mortgage Association (GNMA).

[59 FR 19107, Apr. 21, 1994, as amended at 59 FR 33199, June 28, 1994; 62 FR 15802, Apr. 2, 1997]

### Subpart C—Procedures for Making Determinations on Floodplain Management

#### § 55.20 Decision making process.

The decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives. The steps to be followed in the decision making process are:

(a) *Step 1.* Determine whether the proposed action is located in a 100-year floodplain (or a 500-year floodplain for a Critical Action). If the proposed action would not be conducted in one of those locations, then no further compliance with this part is required.

(b) *Step 2.* Notify the public at the earliest possible time of a proposal to consider an action in a floodplain (or in the 500-year floodplain for a Critical Action), and involve the affected and interested public in the decision making process.

(1) The public notices required by paragraphs (b) and (g) of this section may be combined with other project notices wherever appropriate. Notices required under this part must be bilingual if the affected public is largely non-English speaking. In addition, all notices must be published in an appropriate local printed news medium, and must be sent to federal, state, and local public agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action.

(2) A minimum of 15 calendar days shall be allowed for comment on the public notice.

(3) A notice under this paragraph shall state: the name, proposed location and description of the activity; the total number of acres of floodplain involved; and the HUD official and phone number to contact for information. The notice shall indicate the hours and the HUD office at which a full description of the proposed action may be reviewed.

(c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a floodplain (or the 500-year floodplain for a Critical Action).

## § 55.21

(1) The consideration of practicable alternatives to the proposed site or method may include:

(i) Locations outside the floodplain (or 500-year floodplain for a Critical Action);

(ii) Alternative methods to serve the identical project objective; and

(iii) A determination not to approve any action.

(2) In reviewing practicable alternatives, the Department or a grant recipient subject to 24 CFR part 58 shall consider feasible technological alternatives, hazard reduction methods and related mitigation costs, and environmental impacts.

(d) *Step 4.* Identify the potential direct and indirect impacts associated with the occupancy or modification of the floodplain (or 500-year floodplain for a Critical Action).

(e) *Step 5.* Where practicable, design or modify the proposed action to minimize the potential adverse impacts within the floodplain (including the 500-year floodplain for a Critical Action) and to restore and preserve its natural and beneficial values. All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) and modified to include:

(1) Preparation of and participation in an early warning system;

(2) An emergency evacuation and relocation plan;

(3) Identification of evacuation route(s) out of the 500-year floodplain; and

(4) Identification marks of past or estimated flood levels on all structures.

(f) *Step 6.* Reevaluate the proposed action to determine:

(1) Whether it is still practicable in light of its exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to other floodplains, and its potential to disrupt floodplain values; and

(2) Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of the information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.

(g) *Step 7.* (1) If the reevaluation results in a determination that there is

## 24 CFR Subtitle A (4-1-10 Edition)

no practicable alternative to locating the proposal in the floodplain (or the 500-year floodplain for a Critical Action), publish a final notice that includes:

(i) The reasons why the proposal must be located in the floodplain;

(ii) A list of the alternatives considered; and

(iii) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values.

(2) In addition, the public notice procedures of § 55.20(b)(1) shall be followed, and a minimum of 7 calendar days for public comment before approval of the proposed action shall be provided.

(h) *Step 8.* Upon completion of the decision making process in Steps 1 through 7, implement the proposed action. There is a continuing responsibility to ensure that the mitigating measures identified in Step 7 are implemented.

### § 55.21 Notification of floodplain hazard.

For HUD programs under which a financial transaction for a property located in a floodplain (a 500-year floodplain for a Critical Action) is guaranteed, approved, regulated or insured, any private party participating in the transaction and any current or prospective tenant shall be informed by HUD (or by HUD's designee, e.g., a mortgagor) or a grant recipient subject to 24 CFR part 58 of the hazards of the floodplain location before the execution of documents completing the transaction.

### § 55.22 Conveyance restrictions for the disposition of multifamily real property.

(a) In the disposition (including leasing) of multifamily properties acquired by HUD that are located in a floodplain (a 500-year floodplain for a Critical Action), the documents used for the conveyance must: (1) Refer to those uses that are restricted under identified federal, state, or local floodplain regulations; and

(2) Include any land use restrictions limiting the use of the property by a grantee or purchaser and any successors under state or local laws.