DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 50, 55, 58, and 200

[Docket No. FR–6272–F–02]

RIN 2506–AC54

Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard

AGENCY: Office of the Secretary, U.S. Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This final rule revises HUD's regulations governing floodplain management and the protection of wetlands to implement the Federal Flood Risk Management Standard (FFRMS) in accordance with the Executive Order titled ''Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input.'' These revisions to HUD's regulations will improve the resilience of HUD-assisted or financed projects to the effects of climate change and natural disasters and provide for greater flexibility in the use of HUD assistance in floodways under certain circumstances. Among other revisions, this rule provides a process for determining the extent of the FFRMS floodplain, with a preference for a climate-informed science approach (CISA) to making this determination. The rule also revises HUD's floodplain and wetland regulations to streamline, improve overall clarity, and modernize standards. Also, this rule revises HUD's Minimum Property Standards for one-to-four-unit housing under HUD's mortgage insurance and low-rent public housing programs to require that the lowest floor in newly constructed structures located within the 1-percent-annual-chance (100-year) floodplain be built at least 2 feet above the base flood elevation (BFE) as determined by best available information. The rule also revises a categorical exclusion when HUD performs environmental reviews and updates various HUD environmental regulations to permit online posting of public notices.

DATES:

Effective Date: May 23, 2024.

Compliance Date: Compliance with this final rule is required no later than June 24, 2024, except: compliance with this final rule's amendments to 24 CFR part 200 is required for new construction where building permit applications are submitted on or after January 1, 2025; and compliance with this final rule's amendments to 24 CFR part 55 is required no later than January 1, 2025 for the following programs: (1) Programs subject to chapter 9 of the Federal Housing Administration's (FHA) Multifamily Accelerated Processing (MAP) Guide (4430.G): Multifamily FHA, Section 202 and 811 capital advance grants, transfers under Section 8(bb) of the United States Housing Act and Section 209 of HUD's annual appropriations (or subsequent provisions), Section 8 Renewals with Capital Repairs, Rental Assistance Demonstration (RAD) conversions to Project-Based Rental Assistance (PBRA), and the Green and Resilient Retrofit Program; and (2) The other mortgage insurance programs subject to part 55: FHA Healthcare and FHA Risk Share.

FOR FURTHER INFORMATION CONTACT: Kristin L. Fontenot, Director, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410–8000. For inquiry by phone or email, contact Lauren Hayes Knutson, Director, Environmental Planning Division, Office of Environment and Energy, Office of Community Planning and Development, at 202–402–4270 (this is not a toll-free number) or email to: *EnvironmentalPlanningDivision@hud.gov.* For questions regarding the Minimum Property Standards, contact Julie Shaffer, Associate Deputy Assistant Secretary, Office of Single Family Housing, 215–861–7216. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 24, 2023, HUD published the ''Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard'' proposed rule (the ''proposed rule'').[1] In the proposed rule, HUD explained that increased and increasing frequency of flooding and weather and climate disasters make it necessary for HUD to ensure it approves Federal investments wisely to minimize losses, particularly following repeated flooding events. The revisions to HUD's regulations implemented through this final rule will improve the resilience of HUD-assisted or financed projects to the effects of climate change and natural disasters and provide for greater flexibility in the use of HUD assistance in floodways under certain circumstances.

HUD has broad general rulemaking authority under 42 U.S.C. 3535 to ''make such rules and regulations as may be necessary to carry out [the Secretary's] functions, powers and duties'' in order to implement its statutory mission, which is to provide assistance for housing to promote ''the general welfare and security of the Nation and the health and living standards of [its] people.''[2] Under the National Housing Act, HUD has discretion to set terms upon which it will insure mortgages. 12 U.S.C. 1701 *et seq.* HUD also has authority and responsibility under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*):

- to use all practicable means;
- to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may:
  - fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
  - assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
  - attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

42 U.S.C. 4331(b).

NEPA also requires all Federal agencies to ''utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment.'' 42 U.S.C. 4332(2)(A). Each year, HUD provides States, local governments, and housing providers with billions of dollars in Federal financial assistance, appropriated and authorized by Congress. By taking the actions it does in this final rule, HUD protects Federal investments, preserves the environment for future generations, and promotes the health, safety, and general welfare of individuals. As described in the

[1] 88 FR 17755. On May 11, 2023, HUD extended the original 60-day comment period provided in the proposed rule by an additional 14 days. *See* 88 FR 30267.

[2] 42 U.S.C. 3531.

proposed rule, in response to the threats that increasing flood risks pose to life and taxpayer funded property, on January 30, 2015, President Obama signed Executive Order (E.O.) 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input.[3] E.O. 13690 amended E.O. 11988, Floodplain Management, which was originally issued in furtherance of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*); the Flood Disaster Protection Act of 1973, as amended (Pub. L. 93–234, 87 Stat. 975); and NEPA (42 U.S.C. 4321 *et seq.*).

Significantly for the purposes of this rulemaking, E.O. 13690 revised section 6(c) of E.O. 11988 to provide new approaches to establish the floodplain. E.O. 13690 provided, however, that prior to any actions implementing E.O. 13690, additional input from stakeholders be solicited and considered. Consistent with this direction, the Federal Emergency Management Agency (FEMA), as Chair of the Mitigation Framework Leadership Group (MitFLG),[4] published a notice in the **Federal Register** seeking public comment on the proposed ''Revised Guidelines for Implementing Executive Order 11988, Floodplain Management'' to provide guidance to agencies on the implementation of E.O. 13690 and 11988.[5] In addition, MitFLG held nine public listening sessions across the country that were attended by over 700 participants from State and local governments and other stakeholder organizations to discuss the Revised Guidelines for Implementing Executive Order 11988, Floodplain Management.[6] MitFLG considered stakeholder input and provided recommendations to the U.S. Water Resources Council (WRC).[7]

On October 8, 2015, the WRC issued the updated ''Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input'' (the ''Guidelines'').[8] Although the Guidelines describe various approaches for determining the higher vertical flood elevation and corresponding horizontal floodplain for federally funded projects, the Guidelines indicate that it is not meant to be an elevation standard but rather a resilience standard. Further, the Guidelines provide that all future actions where Federal funds are used for new construction, substantial improvement,[9] or to address substantial damage [10] meet the level of resilience established by the Guidelines. In implementing the Guidelines and establishing the FFRMS, Federal agencies were to select among the following three approaches for establishing the flood elevation and hazard area in siting, design, and construction:

- *Climate-Informed Science Approach (CISA):* The elevation and flood hazard area that result from using a climate-informed science approach that uses the best-available, actionable, hydrologic and hydraulic data;
- *Freeboard* [11] *Value Approach (FVA):* The elevation and flood hazard area that result from using the freeboard value reached by adding an additional 2 feet to the base flood elevation (the 100-year, or 1-percent-annual-chance flood elevation) for non-critical actions and by adding an additional 3 feet to the base flood elevation for critical actions, or
- *0.2-Percent-Annual-Chance (500-Year) Flood Approach:* The elevation and flood hazard area that result from using the 0.2-percent-annual-chance flood approach (500-year flood elevation).

The FVA and 0.2-percent-annual-chance flood approach result in higher elevations than the base flood elevation with correspondingly larger horizontal floodplain areas. CISA will generally have a similar result, with the exception that agencies using CISA may find the resulting elevation to be equal to or lower than the current elevation in some areas due to the nature of the specific climate change processes and physical factors affecting flood risk at the project site. However, as a matter of policy established in the Guidelines, CISA should only be used if the resulting flood elevation is at least equal to or higher, depending on the criticality of the action, than current base flood elevation.

In response to comments received on the Guidelines, MitFLG included an appendix that explained CISA. Appendix H of the Guidelines [12] explains that CISA treats the future as potentially non-stationary; considers local conditions as well as global change; accommodates other factors beyond those that are climate-related; and assists in bounding the decision space by considering plausible future conditions appropriate to a given decision. CISA uses existing sound science and engineering methods as have historically been used to implement E.O. 11988 but supplemented with best available

[3] 80 FR 6425 (Feb. 2, 2015). E.O. 13690 was revoked by E.O. 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (Aug. 15, 2017); however, E.O. 13690 was reinstated by E.O. 14030, Climate-Related Financial Risk (May 20, 2021), published at 86 FR 27967.

[4] MitFLG is a senior level group formed in 2013 to coordinate mitigation efforts across the Federal Government and to assess the effectiveness of mitigation capabilities as they are developed and deployed across the Nation. The MitFLG includes relevant local, State, Tribal, and Federal organizations. More information about MitFLG can be found at *https://www.fema.gov/emergency-managers/national-preparedness/frameworks/mitigation/mitflg.*

[5] 80 FR 6530 (Feb. 5, 2015). The ''Revised Guidelines for Implementing Executive Order 11988, Floodplain Management'' is included as a supporting document with the docket associated with 80 FR 6530.

[6] Specific information on the listening sessions can be found in the notices on the docket at *https://www.regulations.gov/docket/FEMA-2015-0006/document?documentTypes=Notice.* Transcripts of those sessions are available on the docket at *https://www.regulations.gov/docket/FEMA-2015-0006/document?documentTypes=Supporting%20%26%20Related%20Material.*

[7] The WRC is a statutory body tasked to maintain a continuing study and prepare an assessment of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and the national interest therein. 42 U.S.C. 1962a. The WRC is a means for the coordination of the water and related land resources policies and programs of several Federal agencies. The WRC is composed of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, and the Secretary of Energy.

[8] The Guidelines are available at *https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11988-13690_10082015.pdf.* HUD notes that the WRC is not currently active.

[9] HUD defines substantial improvement in 24 CFR 55.2(b). This final rule does not substantively change this definition except by moving it from its current location in § 55.2(b)(10) to § 55.2(b)(12) to reflect other changes to that section and by clarifying that the term ''structure'' includes a manufactured housing unit.

[10] Substantial damage is defined in FEMA regulations at 44 CFR 59.1 as ''damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.'' For more information on substantial improvement and substantial damage, *see* FEMA, Substantial Improvement/Substantial Damage Desk Reference FEMA P–758 (May 2010), available at *https://www.fema.gov/sites/default/files/2020-08/fema_p_758_complete_r3_0.pdf.*

[11] Freeboard is defined by FEMA as ''a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. 'Freeboard' tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.'' 44 CFR 59.1. *See also* FEMA, National Flood Insurance Program Terminology Index, available at *http://www.fema.gov/freeboard.*

[12] The appendices to the Guidelines are available at *https://www.fema.gov/sites/default/files/documents/fema_IGA-appendices-a-h_10082015.pdf.*

climate-related scientific information when appropriate. CISA is consistent with the climate science and related information found in the latest National Climate Assessment report or other best-available, actionable science. CISA combines information from different disciplines (like atmospheric sciences, coastal sciences, oceanographic sciences) in addition to traditional science and engineering approaches. CISA should include impacts from projected land cover and land use changes, long-term coastal and/or riverine erosion, and vertical land movement expected over the lifecycle of the action.

As described in the Guidelines, CISA relies on best available and actionable science. Best available means data and science that is transparent, technically credible, usable, legitimate, and flexible. Actionable science consists of theories, data, analyses, models, projects, scenarios, and tools that are relevant to the decision under consideration; reliable in terms of its scientific or engineering basis and appropriate level of peer review; understandable to those making the decision; supportive of decisions across wide spatial, temporal, and organization ranges; and co-produced by scientists, practitioners, and decision-makers. Appendix H indicates that different approaches are appropriate for coastal and riverine flooding because the directional change of local sea level plus storm surge is generally known for coastal flood risk but, for riverine, it is difficult to determine the direction of changes in precipitation and resulting flood elevations. As a result, the MitFLG recommended that coastal flood risks agencies take into account mean sea level rise scenarios that are adjusted to reflect local conditions to identify CISA. The MitFLG and Appendix H to the Guidelines do not provide a similar hydrologic standard for CISA for riverine flood risks because of the limitations on best-available and actionable science.

In 2023, Federal agencies participating in the White House Flood Resilience Interagency Working Group [13] reviewed the science behind CISA and concluded that incorporating the latest projections of sea level rise in evaluation of future coastal flood risk continues to be best practice and actionable science, whereas the science surrounding the climate change impacts to precipitation and inland flooding is not mature enough to establish one CISA standard for riverine flooding.[14] In August 2023, the White House Flood Resilience Interagency Working Group released a job aid to assist agencies with their responsibility to identify the floodplain using the three approaches.[15]

E.O. 11988 directs Federal agencies to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. Floodplains are found both in coastal flood areas, where rising tides and storm surge are often responsible for flooding, and in riverine flood areas where moving water bodies may overrun their banks due to heavy rains or snow melt. E.O. 11988 directs each agency to evaluate the potential effects of any actions it may take in a floodplain; to ensure that agency planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to identify the floodplain area.

E.O. 11988, as amended, requires agencies to take a scientific approach to determine if a proposed action is in or affects a floodplain. The result of this analysis is often most easily conveyed via a map, making floodplain maps ubiquitous with the process of identifying the floodplain, though, in process, they are separate. The identification of the floodplain is the analysis the agencies have been tasked with carrying out under E.O. 11988 and maps are the visual representation of that analysis. Because flood risk can change over time, FEMA and the National Flood Insurance Program (NFIP) program continually revise Flood Insurance Rate Maps (FIRMs), advisory base flood elevations and preliminary floodplain maps and studies to incorporate new information and reflect the current understanding of flood risk. E.O. 13690 amended E.O. 11988 to direct agencies to update the floodplain using one (or a combination) of the three approaches listed above, which are incorporated in the FFRMS.

Communities across the Nation have proactively strengthened their local floodplain management codes and standards to ensure that buildings and infrastructure are resilient to flood risk. By implementing the FFRMS, HUD's standards will better align with these actions and better protect against future flood risk, considering climate informed science, where available. At the same time, HUD recognizes that the need to make structures resilient also requires a flexible approach to adapt to the needs of the Federal agency, local community, and the circumstances surrounding each project or action.

II. This Final Rule

In its 2021 Climate Action Plan,[16] HUD committed to completing rulemaking to update 24 CFR part 55 and implement FFRMS as a key component of HUD's plan to increase climate resilience and climate justice across the Department, noting that underserved communities are disproportionately impacted by climate change.[17] Development of equitable strategies to protect low- to moderate-income persons and businesses serving communities disproportionately impacted by climate change is at the core of HUD's mission to create strong, sustainable, inclusive communities. This final rule will improve the resilience of HUD-assisted or financed projects to the effects of climate change and natural disasters and provide for greater flexibility in the use of HUD assistance in floodways under certain circumstances.

HUD notes that affordable housing is increasingly at risk from both extreme weather events and sea level rise, with coastal communities especially at risk. Recent peer-reviewed analysis and mapping by independent research organization Climate Central projects that the number of affordable housing units at risk from flooding in coastal areas will triple by 2050,[18] and a 2019 report from the Denali Commission found that 144 Native Alaskan Villages face infrastructure damage from erosion, flooding, and permafrost thaw.[19]

[13] More information about the White House Flood Resilience Interagency Working Group can be found at *https://www.whitehouse.gov/ceq/news-updates/2021/08/27/readout-of-the-first-white-house-flood-resilience-interagency-working-group-meeting-on-implementation-of-the-federal-flood-risk-management-standard/.*

[14] *See* Federal Flood Risk Management Standard Climate-Informed Science Approach (CISA) State of the Science Report (March 2023), *https://www.whitehouse.gov/wp-content/uploads/2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf.*

[15] *See* FFRMS Floodplain Determination Job Aid (August 2023), *https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf.*

[16] U.S. Department of Housing and Urban Development, Climate Action Plan (Nov. 2021), available at *https://www.hud.gov/climate.*

[17] *See also* Marino, E.K., K. Maxwell, E. Eisenhauer, A. Zycherman, C. Callison, E. Fussell, M.D. Hendricks, F.H. Jacobs, A. Jerolleman, A.K. Jorgenson, E.M. Markowitz, S.T. Marquart-Pyatt, M. Schutten, R.L. Shwom, and K. Whyte, 2023: Ch. 20. Social systems and justice. In: *Fifth National Climate Assessment.* Crimmins, A.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, B.C. Stewart, and T.K. Maycock, Eds. U.S. Global Change Research Program, Washington, DC, USA, available at *https://doi.org/10.7930/NCA5.2023.CH20.*

[18] Maya K. Buchanan et al. (2020). Environ. Res. Lett., 15, 124020.

[19] Alaska Division of Geological & Geophysical Surveys. February 23, 2021. *Alaska's*

HUD's experience in the wake of flood disasters is that unless structures in flood-prone areas are properly designed, constructed, and elevated, they may not withstand future severe flooding events. This risk is exacerbated by climate change and projected increases in hurricane rainfall and intensity as well as other precipitation throughout most of the United States. This final rule provides for a more forward-looking approach to floodplain management, which bases decisions not just on past flooding but on how flood risk is anticipated to grow and change over the anticipated life of a project.

This final rule expands the floodplain of concern from the 1-percent-annual-chance floodplain to the FFRMS floodplain, designated based on projected future flood risk, to ensure that HUD projects are designed with a more complete picture of a proposed project site's flood risk over time. Flood risk projection based on current climate science can help HUD meet the objectives of E.O. 11988, including avoidance of floodplain impacts and minimization of such impacts where there is no practicable alternative to locating a HUD-assisted activity in proximity to flood sources. Adequate elevation of structures is a key minimization strategy, together with complementary natural ecosystem processes and nature-based approaches, to promote the preservation of beneficial floodplain functions.

As recognized by MitFLG and directed by the FFRMS and E.O. 13690, requiring structures located within the expanded FFRMS floodplain to be elevated or floodproofed to an additional elevation above the base flood elevation will increase resiliency and reduce loss of life, property damage, and other economic loss, and can also benefit property owners by reducing flood insurance rates. These higher standards provide an extra buffer above the base flood elevation based on the best available information to improve the long-term resilience of communities. Additionally, higher standards help account for increased flood risk associated with projected sea level rise, increased rainfall, and other climate risks, which are not considered in current FEMA maps and flood insurance costs. As stated in the report ''Global and Regional Sea Level Rise Scenarios for the United States'' (February 2022) by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA),[20] scientists are confident that global sea level will rise by between about 1 and as much as 6.56 feet by the year 2100.[21] The higher standards required, in some cases, by this final rule allow HUD to do more to address these increasing risks.

Choosing alternative sites outside the FFRMS floodplain and requiring additional elevation above the base flood elevation may also lead to a net reduction of expected housing costs over time. HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. Flood insurance is a key financial tool to manage potential rebuilding costs and can make homes in risky areas more expensive due to their greater flood risk. By elevating additional feet above the base flood elevation, homeowners may benefit from flood insurance premium reductions that will increase long-term affordability.

Through this final rule, HUD is prioritizing using CISA in defining the floodplain because it provides a forward-looking assessment of flood risk based on likely or potential climate change scenarios, regional climate factors, and an advanced scientific understanding of these effects. Therefore, in this final rule, HUD will require the use of CISA, where data is available and actionable, to establish the required level of flood resilience for floodplain management decision making, elevation of structures, and floodproofing. In areas where CISA data is not currently available and actionable to define the FFRMS floodplain, as described in this final rule, HUD will typically require that the FFRMS floodplain to be based on the FEMA-mapped 0.2-percent-annual-chance floodplain or a freeboard height above the FEMA-mapped 1-percent-annual-chance floodplain, as further described in the subsection that follows. As CISA data availability improves over time and over a greater area, HUD expects the use of CISA to increase.

Beyond implementing the FFRMS floodplain and elevation requirements, this final rule implements broader changes to modernize and improve 24 CFR part 55 in accordance with the Department's climate adaptation, environmental justice, and equity priorities. These revisions explicitly recognize HUD's responsibility to consider the environmental justice impact of the Department's actions within the floodplain management and decision making process. To meet HUD's affordable housing and community development mission more effectively and efficiently, this final rule also streamlines decision making for activities that mitigate flood risk, avoid wetland losses, or provide co-benefits that directly contribute to HUD's efforts to reduce climate impacts. This final rule also strengthens HUD's commitment to use nature-based floodplain management approaches, where practicable, by identifying specific strategies and practices that have proven effective in increasing flood resilience and environmental quality.

HUD notes that adherence to the requirements in this final rule does not modify any party's responsibilities or obligations under any other Federal laws, including statutes and regulations administered by other Federal agencies.

A. Federal Flood Risk Management Standard (FFRMS) Floodplain

To implement the framework described in this rule, this final rule defines the FFRMS floodplain in a new 24 CFR 55.7. This new section establishes a three-tiered approach to define the FFRMS floodplain, depending on the data available in the project area.

1. *Climate Informed Science Approach (CISA):* The FFRMS floodplain is defined as areas designated as having an elevated flood risk during the anticipated life of the project based on CISA. CISA will generally use the same methodology for both critical and non-critical actions; however, the selection of climate change scenarios used for future projections should account for the lower tolerance of risk based on the action's criticality. Where

Environmentally Threatened Communities. ArcGIS, *https://storymaps.arcgis.com/stories/2a0d221e55ca48dd8092427b50a98804* (*interpreting* University of Alaska Fairbanks Institute of Northern Engineering et al., *Statewide Threat Assessment: Identification of Threats from Erosion, Flooding, and Thawing Permafrost in Remote Alaska Communities—Report Prepared for the Denali Commission*), November 2019, available at *https://www.denali.gov/wp-content/uploads/2019/11/Statewide-Threat-Assessment-Final-Report-20-November-2019.pdf.*

[20] Sweet, W.V., B.D. Hamlington, R.E. Kopp, C.P. Weaver, P.L. Barnard, D. Bekaert, W. Brooks, M. Craghan, G. Dusek, T. Frederikse, G. Garner, A.S. Genz, J.P. Krasting, E. Larour, D. Marcy, J.J. Marra, J. Obeysekera, M. Osler, M. Pendleton, D. Roman, L. Schmied, W. Veatch, K.D. White, and C. Zuzak, 2022: Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines. NOAA Technical Report NOS 01. National Oceanic and Atmospheric Administration, National Ocean Service, Silver Spring, MD, 111 pp., *https://oceanservice.noaa.gov/hazards/sealevelrise/sealevelrise-tech-report.html.*

[21] *Id. See also* NOAA Climate Change Program Office, United States Global Change Research Program, U.S. Climate Resilience Toolkit, available at *https://toolkit.climate.gov/topics/coastal/sea-level-rise.*

part 55 applies,[22] CISA is the required approach to define the FFRMS floodplain if data is available and actionable. When preparing an Environmental Impact Statement (EIS), an analysis of sea level rise and other climate impacts utilizing CISA and other climate risk tools will be required regardless of whether pre-existing data is available for reference. Because EIS level projects have such a high potential for adverse impacts, HUD believes climate informed science is necessary to fully understand the potential environmental concerns, where available and actionable data exists or can be generated in accordance with 42 U.S.C. 4336(b)(3).

2. *0.2-Percent-Annual-Chance Flood Approach (0.2 PFA):* For non-critical actions, where CISA data or other types of CISA analysis is not available or actionable, but FEMA has defined the 0.2-percent-annual-chance floodplain, the FFRMS floodplain is defined as those areas that FEMA has designated as within the 0.2-percent-annual-chance floodplain. For critical actions where CISA data is not available nor actionable, the FFRMS floodplain is defined as either the area within the 0.2-percent-annual-chance floodplain or the area that results from adding an additional three feet to the base flood elevation, whichever results in the larger floodplain and higher elevation. For any action, newly constructed or substantially improved structures within this definition of the FFRMS floodplain are required to be elevated to or above the FFRMS floodplain.

3. *Freeboard Value Approach (FVA):* For non-critical actions, if CISA data is not available or actionable and the FEMA 0.2-percent-annual-chance floodplain is not defined, the FFRMS floodplain is defined as those areas, including the horizontal extent, that result from adding an additional two feet to the base flood elevation as established by the effective FEMA FIRM or Flood Insurance Study (FIS). If available, a FEMA-provided interim or preliminary FIRM, FIS, or advisory base flood elevation, whether regulatory or informational in nature, may also be used; however, an interim or preliminary FEMA analysis map may not be used if the mapped base flood elevation is lower than the current FIRM or FIS. For critical actions where CISA data is not available or actionable and where the 0.2-percent-annual-chance floodplain elevation is not defined, the FFRMS floodplain is defined as those areas, including the horizontal extent, that result from adding an additional three feet to the base flood elevation.

If CISA data is not available or actionable and FEMA FIRMs, FIS, preliminary maps, and advisory base flood elevations are unavailable or insufficiently detailed to determine base flood elevation, other Federal, State, local, or Tribal data may be used as ''best available information'' to define the 1-percent-annual-chance floodplain.

B. Climate Informed Science Approach—Availability and Actionability of Data

As described throughout this final rule, CISA is the preferred approach to define the FFRMS floodplain. In § 55.7, HUD requires that the FFRMS floodplain be defined using CISA where data is available and actionable.

As described in § 55.7, HUD considers CISA data to be available and actionable for a particular project where: (1) the data is included in a tool, resource, or other process developed or identified by a Federal agency or agencies to define the floodplain using CISA, and (2) HUD has adopted the particular tool, resource, or other process through a **Federal Register** notice for comment. As a matter of policy, HUD has decided to publish a **Federal Register** notice for comment prior to the use of a particular tool, resource, or other process under § 55.7.

Regardless of whether HUD has adopted a particular tool, resource, or other process to define the floodplain using CISA, this final rule at § 55.7(f) permits HUD or a responsible entity to voluntarily define the FFRMS floodplain utilizing CISA when a State, Tribal, or local government has formally adopted, through code or other formal adoption measures, a tool, resource, or other written standards that provides data or other methods to identify the FFRMS floodplain using CISA for a particular project. In addition, HUD may identify additional tools, resources, or other processes that a responsible entity may voluntarily use to define the FFRMS floodplain using CISA. HUD or a responsible entity has the option to utilize a tool, resource, written standard, or other process permitted in § 55.7(f) where it results in an elevation that is at least as high as the lowest of (1) the 0.2-percent-annual-chance floodplain elevation; (2) the elevation that results from adding an additional two feet to the base flood elevation; or (3) the elevation required by paragraphs (b) or (c) of § 55.7, if CISA data is available and actionable under paragraphs (b)(1) or (c)(1). Where HUD or a responsible entity voluntarily defines the FFRMS floodplain using the options in paragraphs (f)(1)(i) or (f)(1)(ii) of § 55.7, the criticality of the action must be considered when determining the appropriate elevation of the FFRMS floodplain.

C. Revised Definitions

This final rule revises various definitions in 24 CFR 55.2. The definitions are revised as follows:

Best available information: The final rule relocates the definition of ''best available information'' from within the definition of coastal high hazard area in 24 CFR 55.2 to two new sections, 24 CFR 55.7 and 55.8. The final rule also adjusts the definitions of ''0.2-percent-annual-chance (500-year) floodplain,'' ''floodway,'' and ''1-percent-annual-chance (100-year) floodplain,'' to reflect these new citations.

Sources of best available information for identifying the FFRMS floodplain are described in 24 CFR 55.7 according to CISA, 0.2-Percent-Annual-Chance Flood Approach, and FVA methods. Best available information sources for floodways, coastal high hazard areas, and areas within the Limit of Moderate Wave Action (LiMWA) are identified in 24 CFR 55.8 and include effective and advisory or preliminary FEMA analysis reflected in FEMA's maps.

Critical action: The final rule revises the definition of ''critical action'' to include community stormwater management infrastructure and water treatment plants as examples of utilities or services that could become inoperative during flood and storm events.

Federal Flood Risk Management Standard (FFRMS) floodplain: The final rule adds the definition of FFRMS floodplain.

0.2 percent-annual chance floodplain: The final rule updates the definition of ''0.2-percent-annual-chance floodplain'' to be consistent with the new definition of FFRMS floodplain. The final rule also removes the statement that the 0.2-percent-annual-chance floodplain is the minimum area of concern for critical actions, which is not consistent with HUD's implementation of FFRMS when CISA data is available and actionable.

Impervious surface area: The final rule adds the definition of ''impervious surface area'' to provide an objective criterion for use in §§ 55.8(a)(1), 55.12, and 55.14.

Limit of Moderate Wave Action (LiMWA): The final rule adds the definition of ''Limit of Moderate Wave Action (LiMWA).'' The LiMWA is the

[22] All HUD programs, with the exception of programs that are not subject to NEPA (*e.g.,* the Federal Housing Administration single family program and the Housing Trust Fund), are subject to part 55. Certain projects may be exempt from part 55 based on project activities, as discussed in § 55.12 of this final rule.

inland limit of the portion of Coastal A Zone where wave heights can be between 1.5 and 3 feet during a base flood event, subjecting properties to damage from waves and storm surge.[23] The area on the flood map between the coastal high hazard area (Zone V) and the LiMWA is called the Coastal A Zone, and laboratory tests have consistently confirmed that wave heights within the Coastal A Zone can cause significant damage to structures that are not constructed to withstand coastal hazards.[24] Consistent with the risks posed by these coastal hazards, this final rule requires structures within the Coastal A Zone to be built to Zone V standards.

New construction: The final rule removes the definition for new construction from § 55.2 and incorporates it into a new § 55.10, ''Limitations on HUD assistance in wetlands.'' The definition is also revised to provide additional context on construction actions.

Wetlands: The final rule revises the definition for ''wetlands'' by removing the part of the definition that described how wetlands are determined and moves that description to a new § 55.9, ''Identifying wetlands.'' The final rule also removes the non-exhaustive list of examples of what does not constitute a wetland because it is not necessary to list things that the definition does not cover and in order to avoid confusion about certain areas around deep water aquatic habitats that may be considered wetlands.

D. Assignment of Responsibilities

This final rule clarifies in 24 CFR 55.3 that HUD Assistant Secretaries, the HUD General Counsel, and the President of the Government National Mortgage Association shall take responsibility for all decisions made under their jurisdictions that are made pursuant to the decision making process in 24 CFR 55.20. The final rule also revises the duties of grantees and applicants for clarity and adds a new § 55.3(f) that codifies the role of third-party providers.

E. Notification of Floodplain Hazard

This final rule revises HUD's regulations requiring notification of floodplain hazard. The notification requirements in 24 CFR 55.21 and conveyance restrictions in 24 CFR 55.22 are moved to a new 24 CFR 55.4. This creation of the new § 55.4 emphasizes the importance of providing notice as early in the process as possible. Section 55.4 retains the requirement that HUD (or HUD's designee) or the responsible entity must ensure that any party participating in a financial transaction for a property located in a floodplain and any current or prospective tenant is notified of the hazards of the floodplain location. In addition, 24 CFR 55.4 defines the notification requirements for property owners, buyers, developers, and renters and identifies specific hazards and information that must be included in these notices based on the interests of these parties.

The required information for owners, buyers, and developers includes the requirement or option to obtain flood insurance, the approximate elevation of the FFRMS floodplain, proximity of the site to flood-related infrastructure including dams and levees,[25] ingress and egress or evacuation routes, disclosure of information on flood insurance claims filed on the property, and other relevant information such as available emergency notification resources. For HUD-assisted, HUD-acquired, and HUD-insured rental properties, new and renewal leases are required to include acknowledgements signed by residents indicating that they have been advised that the property is in a floodplain and flood insurance is available for their personal property. Renters must also be informed of the location of ingress and egress or evacuation routes, available emergency notification resources, and emergency procedures for residents in the event of flooding. HUD encourages a proactive and systematic approach to notification requirements for properties in floodplains to ensure that prospective buyers and renters are made aware of potential flood risk with sufficient warning so that they can make risk-informed decisions.

The final rule also moves the conveyance restrictions for the disposition of multifamily real property from 24 CFR 55.22 to 24 CFR 55.4 with minimal changes to reflect updated floodplain terminology.

F. Flood Insurance

To address the issues of flood insurance requirements more comprehensively in the context of 24 CFR part 55 decision making, this final rule consolidates and moves all applicable flood insurance requirements to a new § 55.5. The flood insurance topic requirements covered in the new § 55.5 include Flood Disaster Protection Act (FDPA) limitations on HUD program participation for properties in communities not participating in FEMA's NFIP and on HUD disaster assistance for property damage in a special flood hazard area where previous flood disaster assistance required maintenance of flood insurance and the insurance was not maintained. In addition, § 55.5 includes the much more frequently applicable FDPA requirement for HUD-assisted projects regarding the mandatory purchase of flood insurance within the Special Flood Hazard Area (SFHA) as designated by FEMA on the effective FIRM or FIS, and the NFIP plays an important role in minimization measures to reduce flood losses.

The new § 55.5 also includes new language clarifying that HUD or the responsible entity may require flood insurance beyond the minimums established in the FDPA or by a State, locality, Tribe, or part 55 when necessary to minimize financial risk. Also, the new § 55.5 clarifies that mortgagees participating in a HUD assistance or mortgage insurance or guarantee program may impose additional flood insurance requirements.

While nothing in part 55 requires flood insurance outside of the SFHA, HUD strongly encourages that flood insurance be obtained and maintained for all structures within the FFRMS floodplain to mitigate financial losses. It may also be appropriate for high-value structures to maintain more flood insurance than is available under the NFIP. The maximum available building coverage through the NFIP is $250,000 for single family structures of one-to-four units and $500,000 for multifamily structures with five or more housing units and commercial structures.[26] For example, for FHA multifamily programs, the MAP Guide provides for flood insurance in an amount at least equal to the greater of: (1) the maximum flood insurance available for that type of property under the NFIP; or (2) an amount equal to the replacement cost of

[23] The LiMWA marks the inland limit of the ''Coastal A Zone,'' a term referenced by building codes and standards. The Coastal A Zone is the part of the coastal Special Flood Hazard Area (SFHA) where wave heights can be between 1.5 and 3 feet during the base flood event, see *https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.*

[24] *See, e.g.,* Federal Emergency Management Agency, National Flood Insurance Program, Answers to Questions About the NFIP, available at *https://agents.floodsmart.gov/nfip-answers-to-questions.*

[25] Proximity to flood control infrastructure can be identified through the U.S. Army Corps of Engineers' National Levee Database and National Inventory of Dams, *https://levees.sec.usace.army.mil/.*

[26] *See* FEMA, Flood Insurance and the NFIP Fact Sheet (June 14, 2021), available at *https://www.fema.gov/fact-sheet/flood-insurance-and-nfip.*

the bottom two stories above grade.[27] For larger structures in more expensive areas, it may be necessary to obtain private flood insurance to insure up to the full replacement cost of the structure or owners may risk catastrophic financial losses even with NFIP coverage.

G. Compliance

This final rule creates a new § 55.6 regarding complying with the requirements for floodplain management and protection of wetlands by outlining the process HUD or the responsible entity must follow to determine whether compliance with part 55 is required. The new § 55.6 also describes how to determine whether the 8-step decision making process [28] is required and whether the proposed action would require notification and flood insurance. The new § 55.6 does not create any new requirements but, to assist practitioners, § 55.6 does provide a process to comply with part 55. The new § 55.6 also moves a summary of documentation requirements from § 55.27 to § 55.6(d).

This final rule also creates a new section regarding limitations on HUD assistance in floodplains at § 55.8 and revises § 55.10 to address the topic of limitations on HUD assistance in wetlands. Sections 55.8 and 55.10 largely maintain the restrictions that existed prior to this final rule but with some revisions and additions. For example, § 55.8(b) maintains the current requirement that all decisions be based on the best available flood data provided by FEMA unless the current effective data indicates a higher flood risk than interim or preliminary sources.

In order for HUD assistance to be used in a proposed activity, § 55.8(c) requires that HUD or the responsible entity take measures to address repeat flood losses associated with structures identified by FEMA as Severe Repetitive Loss (SRL) properties.[29] When FEMA has approved improvements designed to prevent repeated flood losses at the SRL property and communicated these to the property owner, completion of this FEMA-identified mitigation qualifies the structure to be listed as ''Mitigated'' and may reduce the flood insurance premium of the SRL property. To ensure that HUD substantial improvement, reconstruction, or new construction funding and HUD-required mitigation identified in the 8-step decision making process delivers this benefit, under § 55.8(c) HUD or the responsible entity must identify and incorporate the FEMA identified SRL mitigation within Step 5 (minimization of impacts) of the 8-step decision making process at § 55.20. The intent of this addition is to preserve lives and property, avoid repeated flood losses, potentially reduce flood insurance costs, and ensure that HUD-identified mitigation at a minimum meets the level of mitigation required by FEMA to be listed as ''Mitigated'' in its NFIP database.

H. Incidental Floodplain Exception

For purposes of defining when projects with onsite floodways may proceed, this final rule removes floodways, as well as coastal high hazard areas and the LiMWA, from the incidental floodplain exception at § 55.12(c)(7) and replaces it with the new § 55.8(a)(1), which covers limitations on HUD assistance in floodways. The new § 55.8(a)(1) clarifies that HUD assistance may be used in floodways in two circumstances:

1. Where an exception in § 55.12 applies. This is not a change from HUD's existing regulations.

2. Where all structures and most improvements are removed from the floodway and a permanent covenant or comparable restriction would prevent future development or expansion of existing uses in the floodplain and/or wetland. Rehabilitation activities, including reconstruction in the case of Presidentially declared disasters, that do not expand existing uses in the FFRMS floodplain outside of the floodway are permitted under the new § 55.8. This exception combines aspects of the existing exceptions for floodplain restoration activities and incidental floodplains and allows for limited improvements in the floodway, including functionally dependent uses, utility lines, de minimis improvements, and removal of existing structures or improvements. This option allows for a broader range of activities in the floodway and in the adjacent FFRMS floodplain than is permitted under the current incidental floodplain exception. This option does require projects with onsite floodways to complete the 8-step decision making process in § 55.20 and determine that there are no practicable alternatives before approving any proposed activity on a site that includes a floodway.

This final rule maintains a narrower version of the existing incidental floodplain exception as applied to the FFRMS floodplain (not including floodways, coastal high hazard areas, or within the LiMWA) in the revised § 55.12(g). The revised § 55.12(g) allows projects to proceed without completing the 8-step decision making process where an incidental portion of the project site falls within the FFRMS floodplain.

I. Identifying Wetlands and Limitations on HUD Assistance in Wetlands

This final rule adds a new § 55.9 and revises § 55.10 to address issues regarding wetlands identification and HUD's limitations on work impacting wetlands.

The new § 55.9, ''Identifying Wetlands,'' builds on the definition of ''wetlands'' in § 55.2(b)(13) by clarifying common areas of confusion and removes unnecessary procedural requirements. Section 55.9 revises HUD's current regulations to address limitations associated with the exclusive use of the National Wetlands Inventory (NWI) for wetlands screening.[30] This final rule broadens the wetlands definition beyond NWI screening alone and addresses the potential for data gaps or outdated information by requiring that HUD and

[27] *See* MAP Guide, sec. 3.9.2.3, available at *https://www.hud.gov/program_offices/administration/hudclips/guidebooks/hsg-GB4430. See also* form HUD–92329, available at *https://www.hud.gov/program_offices/administration/hudclips/forms/hud9.* Per the NFIP definition, the grade level is defined as the lowest or highest finished ground level that is immediately adjacent to the walls of the building. Use natural (pre-construction), ground level, if available, for Zone AO and Zone A (without BFE).

[28] For a discussion of the decision making process in the *Guidelines, see Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input* (October 8, 2015).

[29] SRL properties are defined following current FEMA standards. In its April 2020 NFIP Flood Insurance Manual, FEMA designates NFIP-insured single family or multifamily residential buildings as SRL where:

1. The building has incurred flood-related damage for which four or more separate claims payments have been made, with the amount of each claim (including building and contents payments) exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000; or

2. At least two separate claims payments (building payments only) have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the building.

In both instances, at least two of the claims must be within 10 years of each other, and claims made within 10 days of each other will be counted as one claim. In determining SRL status, FEMA considers the loss history since 1978, or from the building's construction if it was built after 1978, regardless of any changes in the ownership of the building. The term ''SRL property'' refers to either an SRL building or the contents within an SRL building, or both. The most recent designations can be found in Appendix I of the April 2020 NFIP Flood Insurance Manual, available at *https://www.fema.gov/sites/default/files/2020-05/fim_appendix-i-severe-repetitive-loss-properties_apr2020.pdf.*

[30] The U.S. Fish and Wildlife Service maintains the NWI. For more information regarding the NWI, see the U.S. Fish and Wildlife Service's National Wetlands Inventory website, available at *https://www.fws.gov/program/national-wetlands-inventory.*

responsible entities supplement the NWI with a visual observation of the property to assess wetlands indicators. Where these sources do not provide a conclusive answer as to whether a wetland is present, practitioners may use one of three methods to determine the presence or absence of a wetland: (1) consultation with the U.S. Fish and Wildlife Service (USFWS); (2) reference to other Federal, State, and/or local resources and site analysis by the environmental review preparer; or (3) a wetlands evaluation prepared by a qualified wetlands scientist. This process of determining the presence or absence of a wetland increases flexibility and avoids unnecessary consultation with the USFWS without increasing the risk that wetlands will not be accurately identified.[31]

The revised § 55.10, ''Limitations of HUD Assistance in Wetlands,'' explicitly defines the procedural requirements for projects with the potential to directly or indirectly impact on- or off-site wetlands. These revisions to § 55.10 codify and clarify existing policies on wetlands compliance without imposing new requirements.

J. Clarification and Revisions of Exceptions

This final rule breaks down the exceptions in the current § 55.12(a)–(c) into three separate sections, §§ 55.12, 55.13, and 55.14. This revision improves the overall clarity of the three distinct categories of excepted activities: (1) those that are excluded from all compliance with part 55 (§ 55.12); (2) those that must comply with the standards and limitations in part 55, such as prohibitions on activities in floodways but that are not required to complete the 8-step decision making process (§ 55.13); and (3) those that may complete the modified 5-Step decision making process in lieu of the full 8-step decision making process (§ 55.14). Beyond this revision, the final rule makes only limited changes to the exceptions themselves.

1. Exceptions in § 55.12

Based on HUD's experience and activities reflected in environmental review records for floodplain restoration projects, this final rule provides flexibility for floodplain-compatible parks and recreation uses routinely combined with floodplain and wetland restoration and preservation work. In the revised 24 CFR 55.12, ''Inapplicability of 24 CFR part 55 to certain categories of proposed actions,'' this final rule expands on the existing exception for floodplain and wetland restoration and preservation activities to allow certain structures and improvements designed to be compatible with the beneficial floodplain or wetland function of a property.

Two exceptions are removed through this final rule. The exception for sites where FEMA has issued a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) in the current § 55.12(c)(8) is removed. HUD is removing the exception described in the current § 55.12(c)(8)(i) because a FEMA determination, through the LOMA/LOMR process, that a location is outside of the 1-percent-annual-chance floodplain or above base flood elevation is not intended to state whether the location is or is not within the FFRMS floodplain. HUD is removing the exception described in the current § 55.12(c)(8)(ii) on conditional LOMAs and conditional LOMRs for the same reason, as well as because this exception can incentivize adding fill in a floodplain in a manner that reduces floodplain function in adjoining areas by excepting such actions from compliance with part 55. HUD is changing this policy to disincentivize the use of sitewide fill and require completion of the 8-step decision making process before adding fill to modify a floodplain.

HUD is also removing the exception described in the current § 55.12(c)(11) for projects related to ships and waterborne vessels because these are not activities that generally receive HUD funds and practitioners have expressed confusion over its presence in the rule.

2. Exceptions in §§ 55.13 and 55.14

The final rule makes minimal changes to the activities listed in the current § 55.12(a) and (b), which must comply with the requirements in part 55 but do not trigger the full 8-step decision making process. The final rule makes clarifying changes to the requirements currently listed in § 55.12(a)(3) and (4) that the footprint of the structure and paved areas are not significantly increased. Through this final rule, the new § 55.14(c) and (d) require that the footprint of the structure and paved areas are not increased by more than 20 percent. The final rule also includes a clarification for the requirement currently listed in § 55.12(b)(5)(iii) that the approval of financial assistance to lease an existing structure located in the floodplain requires that the structure be insured to the maximum in order to meet the exception. This existing provision was inadvertently omitted from the text of the proposed rule. The final rule provision also clarifies that this exception applies to financial assistance to lease both an existing structure and units within an existing structure.

Notably, the final rule adds two new exceptions:

1. *Section 55.13(f).* For special projects dedicated to improving energy or water efficiency of utilities or installing renewable energy that do not meet the threshold for substantial improvement, the new § 55.13(f) limits procedural hurdles to energy or water efficiency retrofit projects, which have limited potential to adversely affect floodplains or wetlands.

2. *Section 55.14(e).* For repairs, rehabilitation, or replacement of certain infrastructure with limited impact on impervious surface area, including streets, curbs, and gutters, § 55.14(e) provides an exception for smaller scale infrastructure projects that had been lacking from part 55. This added exception does not apply to critical actions, levee systems, chemical storage facilities (including any tanks), wastewater facilities, or sewer lagoons, all of which would require the 8-step decision making process.

K. 8-Step Decision Making Process

For actions that trigger the 8-step decision making process in whole or in part, the final rule makes several revisions to § 55.20 to implement FFRMS, clarify proper completion of each of the 8 steps of the decision making process, and otherwise modernize requirements. These revisions include:

1. Codifying roles and responsibilities in the 8-step decision making process, which have been frequently misunderstood.

2. Editing for consistency with FFRMS and new paragraphs on identification and limitations associated with the FFRMS floodplain and wetlands.

3. Adding an option to publish public notices in Steps 2 and 7 on an appropriate government website as an alternative to a printed news medium.

4. Inserting further clarifications and examples of required and suggested analysis.

5. Adding a requirement to coordinate the 8-step decision making process with any public engagement process associated with environmental justice, where project planners are also engaging stakeholders. This is consistent with the policy goals of Executive Order 14096, ''Revitalizing Our Nation's Commitment

[31] This approach is specific to HUD's regulations and differs from the United States Army Corps of Engineers' (USACE) current process for jurisdictional wetland determination identified in the USACE Wetland Delineation Manual.

to Environmental Justice.'' [32] HUD intends to issue updated guidance on advancing environmental justice.

L. Elevation, Floodproofing, Minimization, and Restoration

In addition to the revisions to § 55.20 previously described, this final rule significantly expands Step 5 in § 55.20(e) to implement FFRMS. Section 55.20(e) of the final rule provides that, in addition to the current mitigation and risk reduction requirements, all new construction and substantial improvement actions in the FFRMS floodplain subject to the 8-step decision making process must be elevated or, in certain cases, floodproofed above the FFRMS floodplain. If higher elevations, setbacks, or other floodplain management measures are required by State, Tribal, or locally adopted code or standards, HUD will require that those higher standards apply. The revised § 55.20(e) also provides more specific instruction on minimization and floodplain restoration measures, which are a key component of increasing flood resilience and must be considered in the 8-step decision making process.

For non-critical actions that are non-residential structures or multifamily residential structures that have no residential dwelling units below the FFRMS floodplain, through § 55.20(e)(1)(ii) of this final rule, new construction and substantial improvement projects may, as an alternative to being elevated above the FFRMS floodplain, be designed and constructed such that, below the FFRMS floodplain, the structure is floodproofed. Except for changing ''base flood level'' to ''FFRMS floodplain,'' as defined in § 55.7, this final rule adopts FEMA's requirements for floodproofing as provided in FEMA's regulations at 44 CFR 60.3(c)(3)(ii) and 60.3(c)(4)(i). In summary, all substantially rehabilitated or newly constructed structures within the FFRMS floodplain which are not elevated must be floodproofed consistent with the latest FEMA standards at or above the level of the FFRMS floodplain. This provision permits owners of non-residential and certain residential buildings to construct structures in a way that is less expensive than elevating but allows the buildings to withstand flooding, thus appropriately balancing property protection with costs and reflecting the lower risk to human life and safety in non-residential structures or parts of structures.

In the case of residential buildings, § 55.20(e)(1) of this final rule provides that the term ''lowest floor'' must be applied consistent with FEMA regulations in 44 CFR 59.1, FEMA's Elevation Certificate guidance, or FEMA's current guidance that establishes lowest floor.

Through this final rule, § 55.20(e)(2) identifies specific strategies that can reduce flood risk and loss of beneficial values of floodplains and wetlands, including green infrastructure, reconfiguration of the project footprint, and incorporation of resilient buildings standards. These strategies are based on floodplain and stormwater management best practices and HUD experience. Based on requests for technical assistance in this area, HUD believes the inclusion of recommended minimization measures will assist persons engaged in an 8-step decision making process.

This final rule also adds a new § 55.20(e)(3) to describe more clearly what is meant by restoration and preservation of wetlands or beneficial functions of the floodplain. Floodplain preservation is a concept that has been used in 24 CFR part 55 implementation historically but has been defined primarily through guidance, and this clarification is based on past practice and the successful incorporation of these measures in HUD-assisted projects.

Finally, this final rule replaces the current § 55.20(e)(3), which defines mitigation measures specific to critical actions, with a new § 55.20(e)(4). Section 55.20(e)(4) establishes mandatory actions to plan ahead for residents' safety in multifamily residential properties, healthcare facilities, and critical actions.

M. Processing for Existing Nonconforming Sites

This final rule creates a new § 55.21, ''Alternate processing for existing nonconforming sites,'' to address concerns about existing sites with onsite floodways. This section creates a special approval process for improvements to existing HUD-assisted or HUD-insured properties with onsite floodways under the following circumstances, summarized as:

1. HUD completes an 8-step decision making process and environmental review pursuant to part 50 and mandates measures to reduce flood risk and ensure that there are no other environmental risks or hazards at the site;

2. Specific measures will be taken to minimize flood risk and improve overall resilience at the site, including removing all residential units and critical action structures from the floodway; and

3. HUD determines that the HUD assistance cannot be practicably transferred to a safer site.

The purpose of this section is to establish a means of continuing HUD assistance or financing in exceptional circumstances to existing HUD-assisted or HUD-financed projects (*e.g.,* properties receiving assistance through Public Housing, Section 8 Project-based Rental Assistance, or subject to a HUD-insured mortgage) that would otherwise be unable to comply with part 55 due to the presence of an on-site floodway. This section should be applied only in very rare cases and is not intended to eliminate the general prohibition on providing HUD assistance for projects within floodways. However, HUD recognizes that there are circumstances in which terminating HUD assistance would not improve residents' overall resilience or safety in the context of HUD's mission. In such cases, HUD will closely review the site and determine whether the best option to improve flood resilience would be financing improvements at the existing site or rejecting HUD assistance at the site. The Assistant Secretary for Community Planning and Development has the authority to approve a project after HUD has met all of the conditions above.

N. Other Changes to Part 55

This final rule makes various other changes to part 55 to update terminology and references and restructures part 55 for readability and accuracy. Additionally, this final rule removes various provisions codified in part 55 that are outdated or underutilized.

The final rule removes § 55.24, ''Aggregation,'' because this provision is redundant with aggregation principles described more clearly in 24 CFR parts 50 and 58, which also apply to projects processed under 24 CFR part 55.

The final rule also removes the current § 55.25, ''Areawide compliance.'' Areawide decision making described in this section requires a complex notification process involving publications, and HUD has no record of the provision's use in a HUD-assisted activity since the promulgation of 24 CFR part 55. This provision is unnecessary because HUD has well-established procedures for tiering of environmental review records that similarly facilitate compliance with part

[32] E.O. 14096 builds on and supplements prior E.O.s. *See* 88 FR 25,251 (Apr. 26, 2023), *https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all.*

55 across a geographic area without relying on § 55.25.

The final rule relocates instructions on documenting 24 CFR part 55 decision making in the HUD environmental review record from § 55.27 to § 55.6 so that the instructions appear in context with general instructions on compliance with 24 CFR part 55 and a description of its structure. Additionally, the final rule revises the documentation requirements for consideration of alternatives to the proposed action to remove the requirement to compile a list of alternative properties in the local market. This information may be unavailable for some project types or not relevant to consideration of viable alternatives to achieve the goals of the decision making process within a given HUD program context.

The final rule removes § 55.28, which, in concept, provides relief from five of the eight steps in the wetlands decision making process when a permit has been secured from the United States Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act for a proposed HUD-assisted construction activity in a jurisdictional wetland outside of the floodplain. The final rule removes this section because practitioners have not historically found it useful, and part 55 already contains another section that offers similar relief from the 8-step decision making process where USACE (or any other Federal agency) has already completed the 8-step decision making process for the same action. Section 55.26, which the final rule retains with revisions, allows HUD or responsible entities to adopt another agency or responsible entity's 8-step decision making process under conditions that are less restrictive than those in § 55.28, which apply to decision making under E.O. 11988 or E.O. 11990 carried out by USACE.

O. Minimum Property Standards

This final rule applies a new elevation standard to one-to-four-family residential structures with mortgages insured by FHA. Generally, in HUD's single family mortgage insurance programs, Direct Endorsement mortgagees submit applications for mortgage insurance to HUD, and Lender Insurance mortgagees endorse loans for insurance after the structure has been built. Thus, there is no HUD review or approval before the completion of construction. In these instances, HUD is not undertaking, financing, or assisting construction or improvements. Thus, the FHA single family mortgage insurance program is not subject to review under E.O. 11988, NEPA, or related environmental laws or authorities. However, newly constructed single family properties in HUD's mortgage insurance programs are generally required to meet HUD's Minimum Property Standards under 24 CFR 200.926 through 200.926e. These property standards require that when HUD insures a mortgage on a property, the property meets basic livability and safety standards and is code compliant. The section relating to construction in flood hazard areas, § 200.926d(c)(4), has long been included as a property standard.

In alignment with the revisions in this final rule that address FFRMS under E.O. 11988, this final rule also amends the Minimum Property Standards on site design, specifically the standards addressing drainage and flood hazard exposure at § 200.926d(c)(4). The purpose of the amendment of the property standards is to decrease potential damage from floods, increase the safety and soundness of the property for residents, and provide for more resilient communities in flood hazard areas. The final rule revises § 200.926d(c)(4) by requiring the lowest floor (including basements and other permanent enclosures) of newly constructed dwellings, within the 1-percent-annual-chance floodplain, to be at least 2 feet above the base flood elevation as determined by best available information. For one- to four-unit housing under HUD's mortgage insurance and low-rent public housing programs, HUD's Minimum Property Standards in 24 CFR part 200 currently require that a one- to four-unit property involving new construction, located in the 1 percent-annual-chance floodplain in the effective FIRM, be elevated to the effective FIRM base flood elevation. This final rule adds two feet of additional elevation to the base flood elevation as a resilience standard and applies this standard only to new construction of such properties and not to substantial improvement. This final rule does not require consideration of the horizontally expanded FFRMS floodplain for single family mortgage insurance projects governed by the requirements in the Minimum Property Standards.

P. Categorical Exclusion

This final rule amends § 50.20(a)(2)(i) to revise the categorical exclusion from further environmental review under NEPA for minor rehabilitation of one- to four-unit residential properties. Specifically, this final rule removes the qualification that the footprint of the structure may not be increased in a floodplain or wetland when HUD performs the review. In 2013, HUD removed the footprint trigger from the corresponding categorical exclusion at § 58.35(a)(3)(i) for rehabilitations reviewed by responsible entities. This change makes the review standard the same regardless of whether HUD or a responsible entity is performing the review. Moreover, when HUD performs a review under 24 CFR part 50, the categorical exclusion in § 50.20(a)(3) applies to construction, but not rehabilitation, of up to four units in a floodplain or wetland as an individual action such that an environmental assessment or environmental impact statement is normally not required. Rehabilitated structures in a floodplain or wetland with an increased footprint currently require an environmental assessment or environmental impact statement.[33] It is logically inconsistent to require a greater review for minor rehabilitations than new construction. Similarly, it is logically inconsistent to apply a higher level of review for HUD as opposed to grantees because the proposed actions would be the same regardless of review authority under 24 CFR part 50 or part 58.

Actions under this revised categorical exclusion remain subject to E.O. 11988, E.O. 11990, and part 55, and any impact resulting from an increased footprint in a floodplain or wetland will be fully addressed by the 8-step decision making process in part 55.

Q. Permitting Online Posting

This final rule updates §§ 50.23, 58.43, 58.45, and 58.59 to allow public notices to be posted on an appropriate government website as an alternative to publication in local news media if the appropriate government website is accessible to individuals with disabilities and provides meaningful access to individuals with Limited English Proficiency. This change makes parts 50 and 58 consistent with revised § 55.20, which allows public notices required as part of the 8-step decision making process to be posted on a government website instead of in a newspaper.

R. Severability

This final rule incorporates a new severability provision in a new subpart D, at § 55.30. As described in § 55.30, it is HUD's intent that each provision of this final rule has effect to its fullest extent permitted by law, including by ensuring the severability of any provision affected by a judicial order. Should a court find any specific portion of this final rule unenforceable, the

[33] *See* § 50.20(a)(3)(iii).

remainder of this final rule and its application should remain effective to the fullest extent permitted by law. Those portions that are unaffected by any judicial ruling can be implemented by HUD without a new rulemaking simply to promulgate provisions that are not subject to a court ruling. For example, this final rule revises standards in both 24 CFR parts 55 and 200. The administration and workability of each part are independent; and so, severing a portion of the revision to one part would not affect the administration and workability of the revisions in the other part. Similarly, severing one program from the application of this final rule would not affect the administration and workability of its application to other HUD programs. As another example, severing one approach for identifying the FFRMS floodplain described in § 55.7 would not affect the validity and administration of the remainder of § 55.7, nor the remaining portions of this final rule.

S. Tribal Consultation and Stakeholder Listening Sessions

HUD's Government-to-Government Tribal Consultation Policy calls for consultation with Tribal Nations and Tribal Leaders early in the rulemaking process on matters that have Tribal implications. Accordingly, on June 10, 2021, HUD sent letters to all eligible funding recipients under the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) and their tribally designated housing entities informing them of the nature of the forthcoming rule and soliciting comments. This letter announced a 30-day comment period and a webinar and conference call consultation session regarding the forthcoming rule. On August 18, 2021, HUD sent a second letter with a 60-day comment period to review an early draft of the proposed regulatory changes. During this period, HUD held an additional consultation session via webinar and conference call. This letter was posted on Codetalk, the HUD Office of Native American Programs' website, along with an early outline of the rule. During this draft review period, HUD received one written comment, suggesting that HUD explicitly recognize the right to Tribal self-governance in part 55. HUD acknowledges the sovereignty of federally recognized American Indian and Alaska Native Tribes and is committed to operate within a Government-to-Government relationship to allow Tribes the maximum amount of responsibility for administering their housing programs. Tribes had the opportunity to comment on this rule at the proposed rule stage.

During the comment period of the proposed rule, HUD engaged in additional stakeholder outreach through four live listening sessions held April 17, 2023, May 2, 2023, May 4, 2023, and May 15, 2023. While all sessions were free and open to the public, local government officials, Tribal representatives, housing industry representatives, and the general public each had a session targeted towards their respective organizations or groups. These sessions were intended as informative listening sessions in which HUD provided an overview of the proposed rule and an opportunity for members of the public to comment. Notes from the listening sessions can be found at *https://www.hud.gov/program_offices/comm_planning/environment_energy/ffrms.*

T. Delayed Compliance Date

This final rule has an effective date of *May 23, 2024;* however, required compliance with this final rule is delayed until June 24, 2024, except: compliance with this final rule's amendments to 24 CFR part 200 is required for new construction where building permit applications are submitted on or after January 1, 2025; and compliance with this final rule's amendments to 24 CFR part 55 is required no later than January 1, 2025 for the following programs: (1) Programs subject to chapter 9 of the MAP Guide (Multifamily FHA, Section 202 and 811 capital advance grants, transfers under Section 8(bb) of the United States Housing Act and Section 209 of HUD's annual appropriations (or subsequent provisions), Section 8 Renewals with Capital Repairs, RAD conversions to PBRA, and Green and Resilient Retrofit Program); and (2) The other mortgage insurance programs subject to part 55 (FHA Healthcare and FHA Risk Share).

After reviewing public comments, HUD has determined, in certain instances, to provide a delayed compliance period to allow entities regulated by this rule a grace period to come into compliance with the revised requirements. As described, compliance with the amendments to part 200 of this rule is required for new construction where building permit applications are submitted on or after January 1, 2025. This delay is intended to provide home builders ample opportunity to adapt and prepare for the requirements of this rule, including the increased elevation standards. Setting a delayed compliance period for the amended requirements for part 200 is appropriate to address public comments received expressing concern that the rule could limit the availability of single family affordable housing. Applications for single family FHA insurance are submitted to HUD after housing construction is completed. As a result, for new construction located in Special Flood Hazard Areas, applications submitted to HUD following implementation of this rule will be rejected if they do not meet the elevation requirements in the Minimum Property Standards. HUD is extending the compliance date for the part 200 revisions to allow time for housing developers to incorporate the new Minimum Property Standards into the planning process for new construction.

Similarly, after reviewing public comments, HUD has determined to provide a delayed compliance period until January 1, 2025, for entities to come into compliance with the revisions this final rule makes to part 55 for the following programs: (1) Programs subject to chapter 9 of the MAP Guide (Multifamily FHA, Section 202 and 811 capital advance grants, transfers under Section 8(bb) and under Section 209 of HUD's annual appropriations (or subsequent provisions), Section 8 Renewals with Capital Repairs, RAD conversions to PBRA, and the Green and Resilient Retrofit Program); and (2) The other mortgage insurance programs subject to part 55 (FHA Healthcare and FHA Risk Share). Setting a delayed compliance period for the revised part 55 is appropriate for these programs to account for the extensive lead time required for site design, planning, and environmental analysis, all of which are required prior to submitting an application for FHA mortgage insurance. Many mortgage insurance projects include large-scale development that requires significant time and monetary investment in planning initiatives, thereby requiring a longer compliance period to incorporate part 55 revisions into the planning process. Additional programs subject to the MAP Guide have similar project planning timelines. The delayed compliance period poses limited increased flood risk for these programs in the interim because the MAP Guide currently requires elevation to BFE +2 feet for new construction, which is one of the methods for defining the FFRMS floodplain under this rule.

III. Changes at the Final Rule Stage

In response to comments received during the proposed rule stage of this rulemaking, HUD is making several revisions to the final rule:

Part 50 (Authority). The final rule revises the authority section at the beginning of part 50 to update the

authority of ''42 U.S.C. 4321–4335'' to ''42 U.S.C. 4321–4336e.'' This change to the citation to NEPA is appropriate because the Fiscal Responsibility Act of 2023 (Pub. L. 118–5) added additional sections to NEPA.

Part 55 (Authority). The final rule revises the authority section at the beginning of part 55 to add the authority 42 U.S.C. 4321 *et seq.* This change to include NEPA is appropriate because NEPA requires the Federal government to act as a ''trustee of the environment'' for future generations.

Section 55.2. In § 55.2(b)(12), the final rule, in paragraphs (i)(A) and (i)(B), clarifies that the repair, reconstruction, modernization, or improvement of a structure includes a manufactured housing unit. In § 55.2(b)(13), the final rule also removes the non-exhaustive list of examples of what does not constitute a wetland because it is not necessary to list things that the definition does not cover and in order to avoid confusion about certain areas around deep water aquatic habitats that may be considered wetlands.

Section 55.4. In § 55.4(b), the final rule adds the term ''HUD-acquired'' to the list of property types to clarify that properties that had been previously insured by HUD and were then acquired by HUD through default are also subject to the requirements for notification to renters when a property is in a floodplain.

Section 55.6a. The final rule adds a new section regarding severability at § 55.6a, which describes that any portion of this rule found to be unlawful shall be severable from this rule and the remainder of the part shall continue to remain effective.

Section 55.7. The final rule adds language to § 55.7(b)(1) and (c)(1) to clarify when HUD considers data to be available and actionable to define the FFRMS floodplain using CISA. The final rule also adds language to 55.7(e) to clarify that CISA must be used for EIS level projects where available and actionable data exists or can be generated. Additionally, the final rule adds language to § 55.7(f) to clarify that HUD and responsible entities may utilize local tools to implement CISA on a voluntary basis, as long as the resulting elevation is at least as high as the lowest of (1) the 0.2-percent-annual-chance flood elevation; (2) the elevation that results from adding an additional two feet to the base flood elevation; or (3) the elevation required by paragraphs (b) or (c) of § 55.7, if CISA data is available and actionable under paragraphs (b)(1) or (c)(1). The final rule also permits the voluntary use of any particular tool, resource, or other process that defines the floodplain using CISA that HUD identifies through guidance.

Section 55.8. In § 55.8(a)(1)(ii), the final rule expands the scope of activities allowed in the FFRMS floodplain where there is a floodway onsite to include rehabilitation that does not expand the footprint of existing buildings or the number of units on the site. In § 55.8(a)(1)(ii)(B), HUD removed specific examples of de minimis improvements from the rule. HUD intends to provide more detailed guidance on de minimis improvements to ensure that only compliant work is allowable under this part. In § 55.8(a)(2), the final rule clarifies that certain critical actions may be located in the floodway if they are functionally dependent and any existing or new structure has been or will be elevated or floodproofed to the FFRMS elevation for critical actions; and that certain critical actions may be located in a coastal high hazard area or LiMWA if they are functionally dependent and meet FEMA's mitigation requirements for such actions located in the coastal high hazard area. This section also clarifies that for critical actions, mortgage insurance on a property containing a floodway may be exempt from the prohibition in § 55.8(a)(2) if there are no structures or improvements located in the floodway, and subject instead to § 55.8(a)(1).

Section 55.9. In § 55.9(a), the final rule makes minimal changes to align the text of § 55.9(a) with § 55.10.

Section 55.10. In § 55.10(a), the final rule clarifies, through an added example, that new construction activities for a proposed project include related activities for any structures or facilities including the siting of new manufactured housing units.

Section 55.12. The final rule excludes the proposed § 55.12(g)(3) so as to avoid duplication and to better align with both existing processes and new incidental floodway provisions.

Section 55.13. In § 55.13(e), the final rule clarifies that the exception to § 55.20 applies to financial assistance to lease an existing structure and/or units within an existing structure, adds paragraph (e)(3), which was unintentionally omitted from the proposed rule and aligns with existing regulatory language, and specifies in paragraph (e)(3) that the structure should be insured to the maximum extent available under the NFIP. In § 55.13(f), the final rule clarifies that the exception applies to special projects for the purpose of improving the ''energy or water efficiency'' of utilities rather than the ''efficiency'' of utilities. The final rule excludes the proposed 55.13(g) exemption to avoid unnecessary duplication. HUD determined that both the Section 184 Indian Housing loan guarantee program and the Section 184A Native Hawaiian Housing loan guarantee program meet the categorical exclusion at 24 CFR 50.19(b)(17), which is already exempt from part 55 under § 55.12(b).

Section 55.16. In Table 1 to § 55.16, the final rule clarifies that certain critical actions may be located in the floodway, coastal high hazard area, and LiMWA, if they meet the requirements for critical actions in § 55.8.

Section 55.20. The final rule adds a new paragraph (e)(2)(iv) to § 55.20 to clarify that, if applicable, minimization techniques include identifying and incorporating FEMA identified Severe Repetitive Loss mitigation as outlined in § 55.8(c). The final rule also makes minimal changes to § 55.20(a) to align the language with § 55.10. The final rule also adds nature-based approaches as an alternative method for avoiding impacts to wetlands and floodplains in § 55.20(c)(1)(ii). Additionally, the final rule makes other changes to eliminate redundant language.

Section 55.21. The final rule revises the layout of § 55.21(b) to improve readability. Additionally, § 55.21(b) adds minimum requirements for proposed projects to meaningfully reduce flood risk and increase the overall resilience of the site, including a No-Rise Certification for any new improvements in the floodway.

Section 55.30. The final rule adds a new section regarding severability at § 55.30, which describes that any portion of this rule found to be unlawful shall be severable from this rule and the remainder of the part shall continue to remain effective.

Part 58 (Authority). The final rule revises the authority section at the beginning of part 58 to update the authority of ''42 U.S.C. 4321–4335'' to ''42 U.S.C. 4321–4336e.'' This change to the citation to NEPA is appropriate because the Fiscal Responsibility Act of 2023 (Pub. L. 118–5) added additional sections to NEPA.

Section 200.926. The final rule removes the proposed revision to § 200.926(a) that would have applied the elevation standard in § 200.926d(c)(4)(i) through (iii) to substantial improvement activities. In response to public comments received, HUD determined to not include the proposed change to § 200.926(a) in the final rule to avoid creating adverse impacts on homeowners renovating their existing single family homes in low-cost areas.

Section 200.926d. The final rule does not apply § 200.926d elevation requirements to substantial improvement activities. The final rule also clarifies that for the elevation certificate required by § 200.926d(c)(4)(iii), HUD's elevation standard for newly erected manufactured housing is the standard required in 24 CFR 203.43f or 24 CFR part 3285, as applicable, rather than two feet above base flood elevation.

IV. Public Comments

This public comments section contains a summary of the public comments that HUD received in response to the proposed rule.

Specific Questions for Comment From the Proposed Rule

In section III.Q of the proposed rule, HUD included several specific questions for public comment. Those specific questions from the proposed rule and public comments received in response to those specific questions are summarized here, along with HUD's responses to the public comments received.

A. Question #1: Whether To Prioritize an Alternative Method Among the Three Approaches To Define the FFRMS Floodplain

1. General Support for the Proposed CISA Approach

Several commenters generally expressed support for HUD's goals outlined in the proposed rule, such as protecting safety, health and welfare, preserving natural floodplains, considering environmental justice impacts, preventing the significant impact of flooding on underserved communities, and more accurately measuring flood risk. One commenter emphasized that it was HUD's fiscal obligation to regulate the FFRMS floodplain using CISA to reduce the Federal government's fiscal exposure to climate change. Another commenter strongly supported HUD's assessment to subject more of the floodplain area to the 8-step decision making process and encouraged HUD to solidify the basic purpose and guidance in 24 CFR 55.1(a)(5) of the proposed rule. The commenter emphasized the importance of HUD's commitment because flooding—even inland flooding—is becoming more frequent across the U.S. coastline, due to climate change, no matter how it is measured.

Several commenters expressed support for the three-tiered approach for defining the FFRMS floodplain outlined in the proposed rule. These commenters also agreed that CISA should remain the primary method for determining the FFRMS floodplain. Commenters noted a preference for CISA because it is forward-looking, acknowledges ongoing advances in climate science, is more dynamic, and provides a more complete picture of flood risk over the lifetime of a project.

Several commenters also expressed their support for HUD's proposal to utilize the 0.2-Percent-Annual-Chance Flood Approach and the Freeboard Value Approach when CISA maps and analyses are not available. One commenter noted that where CISA floodplains cannot be implemented in the short- and medium-term, it is important to rely on proven standards that will give stakeholders tools that are well-understood and widely available.

Another commenter agreed with HUD that FEMA flood maps are often out of date and cited the White House Flood Resilience Interagency Working Group's Federal Flood Risk Management Standard CISA State of the Science Report in noting that the maps reflect that efforts to prioritize modernizing and implementing the NFIP are overdue. This commenter believed that the latest science on flood risk hazards demonstrates that there is sufficient data to regulate the FFRMS based on climate science and that it is critical the Federal government do so when the data are available in order to prevent risky planning and investment decisions.

One commenter emphasized that they support HUD's CISA-centered approach because it is likely that FEMA's 1-percent-annual-chance flood hazard measurements underestimate the number of assisted housing units within those areas. This commenter encouraged HUD to use CISA to the maximum extent possible. Another commenter agreed that continuing to use the 1-percent-annual-chance or even the 0.2-percent-annual-chance floodplain in place of CISA is irresponsible especially given HUD's mission of serving low-income families who are particularly ill-equipped to recover from flood-related hardships.

One commenter supported HUD's three-tiered approach prioritizing CISA, and added that since flood elevations are not static, a cautionary statement of reviewing the characteristics of flooding (velocity, debris, and flashiness) should also be considered for all proposals. Another commenter emphasized that no matter what approach was ultimately taken, it is important to streamline the FFRMS floodplain determination process and limit room for conjecture.

One commenter urged HUD to go further in its rule by requiring the evaluation of potential flooding throughout the design lifetime of structures using the best available risk modeling and science. This commenter said HUD should require project plans to account for expected flood heights and other mitigation measures. Another commenter requested HUD consider at minimum a 50-year projection for CISA and suggested HUD project larger floodplains because of the time necessary for climate instability to manifest. Another commenter recommended HUD use the same lower level of risk tolerance for critical and non-critical actions, arguing that the Federal government has a moral imperative to safeguard new and updated affordable housing by ensuring affordable housing can withstand climate change.

Several commenters asked HUD to incorporate some clarity in its final rule surrounding the meaning of ''anticipated life of the project.'' One commenter noted that it is not unusual for projects to extend beyond their anticipated life for years or even decades and that a project's extended life could impact the elevation for which they should be designed. Another commenter asked that HUD require CISA criteria to be extended over the entire life of a project—a minimum of 50 years, which is the length of time used for most building life cycle assessments.

HUD Response: HUD appreciates the support from commenters for HUD's goals outlined in the proposed rule. HUD disagrees that it is our fiscal obligation to regulate using CISA; however, we agree that it should be used as the preferred approach where data is available and actionable. HUD developed the three-tiered approach to defining the FFRMS floodplain with the intent to be more forward-looking and acknowledge that being flexible is necessary as science advances to best achieve the outlined goals. HUD appreciates commenters' feedback regarding the use of a multi-tiered approach and the importance of using proven standards when CISA is unavailable. HUD also appreciates the commenters' support that a wider floodplain area be considered in the 8-step decision making process, though HUD disagrees that this needs to be stated in 24 CFR 55.1(a)(5) because HUD considers the existing language sufficient and effective.

HUD also appreciates the commenters' considerations that FEMA FIRMs are static and based on a snapshot of data in time. HUD believes that its preferred approach, CISA, provides a significant advantage to provide future flood risk management.

HUD intends to publish guidance to help grantees choose appropriate design life horizons to utilize CISA effectively. The goal is for the chosen design life to protect the Federal investment throughout the anticipated life of the project without overly burdening projects with unreasonable elevation requirements. HUD notes that critical actions are given additional mitigation requirements as per the instructions in the Guidelines which ask Federal agencies to use higher standards for critical actions due to their more sensitive nature. This higher standard was considered too economically burdensome to impose on all projects with lower inherent risk, so it was not imposed for all activities. HUD intends that this rule will help protect Federal investments against future flood risk.

2. Concerns Regarding the Proposed CISA Approach

Several commenters also wrote in with concerns about HUD's approach for defining the FFRMS floodplain in its proposed rule.

a. Burden and Uncertainty

One commenter stated that the three-tiered definition of FFRMS floodplain was too confusing and burdensome. This commenter noted that establishing whether an action was in a floodplain or not is a critical first step in HUD's regulatory process given that if the action does occur in a floodplain, additional analysis and mitigation requirements are triggered. The commenter went on to say that without established floodplain maps, stakeholders will have a difficult time completing this first step and these material unknowns and uncertainties will generate increased project delays, increased project costs, and increased project cancelations—all at the expense of much-needed housing.

One commenter was specifically concerned with the horizontal floodplain definition. The commenter stated that FEMA's FIRMs are well-established and have clearly depicted the 1-percent-annual-chance floodplain in most communities across the Nation to the extent that many Federal, State, and local regulations are tied to the 1-percent-annual-chance floodplain. FEMA's maps regularly provide certainty to property owners to know when and where they must comply with a multitude of rules, codes, ordinances, and grant conditions.

HUD Response: HUD appreciates the commenters' feedback regarding the potential complexity of the tiered approach outlined in the proposed rule. As described earlier in this preamble in section II.B., the tiered approach to defining the FFRMS floodplain provides sufficient direction to grantees and applicants on how to determine if a project is located in the FFRMS floodplain based on data availability. Moreover, HUD intends to roll out ample training and technical assistance with this rule to ensure that grantees are well prepared to execute compliant environmental reviews. With training and assistance, HUD is confident that grantees will be able to navigate the process and avoid unnecessary negative effects on project timelines. This training will also help grantees work with their builders and avoid uncertainty associated with projects located in the FFRMS floodplain.

b. Local Data

Several commenters noted that some communities lack local, State, or Federal elevation data to establish the FFRMS floodplain with any of the three methods outlined in the proposed rule. These commenters suggested that this lack of available data could discourage developers and disproportionately impact rural communities that already have a lack of affordable housing. One commenter noted specifically that professional surveyors will not generally provide the 0.2-percent-annual-chance flood elevation without a formal flood study, which is not only very expensive but is also time-consuming. This commenter urged HUD to consider an alternative elevation for use in these circumstances. Another commenter also noted the expense of land surveys and the resulting decrease in housing that may result.

Conversely, one commenter noted they have created their own mapping tools to evaluate flood risk. This commenter is hoping to be able to continue using their tools and would like HUD to provide an approval process for using them. This commenter reiterated that one of HUD's stated goals is to better align with local standards that have already been strengthened and to take ''a flexible approach to adapt to the needs of . . . the local community.'' Commenters asked HUD to provide up to date maps and data to local communities and asked HUD to model FFRMS requirements after local codes.

One commenter hoped the FFRMS rule would encourage partnerships at all levels of government to adopt floodplain management policies. Another commenter suggested that HUD collaborate with state-level data providers to ensure that local data products meet CISA requirements and receive HUD approval. One commenter used the fact that many localities have made significant investments in ''down-scaled'' mapping of future flood risk as evidence that the availability of technically credible data on future flood risks has developed significantly since HUD's last proposed rule.

Another commenter urged HUD to incorporate local data that considers climate change by considering flood risk information available in each State's Hazard Mitigation Plan.

HUD Response: HUD appreciates the commenter's concerns regarding the availability of data in some communities. HUD understands that there are existing data limitations in some communities, particularly in rural areas, where FEMA mapping is unavailable. This rule does not change the current process and allows communities to utilize flood and elevation studies or best available data, including anything relevant from hazard mitigation plans, to proceed with their floodplain determination. Therefore, where FEMA FIRMs are not available, this rule has no impact on the current part 55 process to utilize best available information and would not have major cost impacts in those areas. The Regulatory Impact Analysis (RIA) did not offer evidence that the cost of surveys would have a significant impact on housing supply. Given the diversity of geography and data for HUD projects, HUD cannot set a standardized baseline elevation for all projects and instead must rely on a project-by-project approach.

As described earlier in this preamble, HUD appreciates that some State, Tribal, and local governments have created CISA tools capable of determining the extent of the FFRMS floodplain in their respective jurisdictions. As such, HUD has adjusted the language of this rule to voluntarily permit the use of local tools where they result in an elevation at least as high as the lowest of (1) the 0.2-percent-annual-chance floodplain elevation; (2) the elevation that results from adding an additional two feet to the base flood elevation or (3) the elevation required by paragraph (b) or (c) of § 55.7, if CISA data is available and actionable under paragraphs (b)(1) or (c)(1). While HUD will not model the FFRMS floodplain around local code requirements because it would lead to uneven protection standards nationwide, this change will better recognize the efforts many localities have made to address their own climate risks.

As part of the White House Flood Resilience Interagency Working Group helping to develop CISA tools nationwide, HUD appreciates the sentiment of commenters who wish to

encourage intergovernmental partnerships to adopt floodplain risk management policies. HUD relies on the Federal science agencies like FEMA and NOAA to work with their local partners to obtain accurate local flood risk data for use in their development of tools which may be used to implement CISA, as well as other FFRMS approaches. HUD is also open to coordinating with state-level providers on a project-specific basis as needed.

c. Federal CISA Implementation Tools

Several commenters agreed that, though they support forward-looking risk projections that consider climate change, it is premature to rely on CISA maps with national coverage, which may take years to develop. One commenter suggested that without stakeholder approval and practical application of tools, any proposed higher elevation requirements may be too severe and result in unintended, adverse consequences. Another commenter noted the opposite concern, that while CISA maps are being developed, older maps will need to be relied upon, which are insufficient. This commenter also noted that no funding is attached to HUD's proposed rulemaking.

One commenter stated that because a BFE based on CISA data cannot be used if the elevation is lower than the current FIRM or FIS and because there may be other environmental disclosure rules regarding climate flooding risk, this multilayered approach, reliant on maps that are not yet available, would create an impractical and untenable level of uncertainty for builders and developers. The commenter urged HUD to withdraw the proposed rule until maps of the floodplains were available and to release a CISA tool for public comment on the data, methodology, functionality, accuracy, and user friendliness of the model before it is implemented. The commenter also recommended the rule be subject to peer-review. If not, they predicted builders would have to do a lot of research and expend resources trying to determine if they were in a floodplain.

One commenter emphasized the complexity of developing a CISA mapping tool and recommended that HUD provide additional clarification on what process it will use to approve maps developed using CISA. The commenter suggested that this proposed rule should have focused more on the development of the mapping tool, and HUD may need to issue a separate notice seeking comment from the public on the tool's development given the complexity of the development process. Specifically, the commenter recommends HUD seek input from stakeholders and industry participants, as their input is critical for the tool's eventual success.

Several other commenters also requested the opportunity to provide feedback on CISA maps. One commenter noted that they would like to provide further comment on a focused handful of HUD's actionable modeling criteria. Other commenters asked whether CISA maps would be available for stakeholders to identify the FFRMS floodplains and whether HUD would require approval for a process that would result in FFRMS floodplain boundaries different than what a user would generate using CISA mapping. These commenters also asked who would approve CISA maps and by what process and what qualifications HUD's approver would have to determine the CISA maps' sufficiency.

Another commenter noted that it is critical for HUD to define the specific circumstances in which it will approve CISA maps. While the commenter stated that might be best done in guidance, they emphasized that HUD's final rule must define some ''high-level guardrails'' as well. The commenter suggested the following guardrails: (1) all maps must, at a minimum, be consistent with current CISA guidelines issued by the Water Resources Council,[34] National Climate Task Force, or equivalent Federal authority and (2) HUD should state clearly that it reserves the authority to deny or revoke approval of CISA maps for any reason.

Other commenters agreed that the proposed rule cannot be fully evaluated without CISA mapping being available for review and that it should not be implemented before the public can review the CISA mapping tools and provide comments. One commenter asked when the tools would be available to make nationwide determinations. Other commenters asked whether there will be a process for the public to refute the CISA maps.

One commenter emphasized the need to analyze granular property-specific data, including structure-specific identifications, first-floor height (FFH) assessments, and 1-meter digital elevation model data, in order to develop a reliable flood risk model. This commenter recommended that HUD use its co-chair position on the National Climate Task Force's FFRMS Science Subgroup to advocate for the addition of 'granular' as a necessary characteristic for ''best available data and science.''

One commenter requested that HUD develop its CISA maps with the following in mind to ensure they are developed properly: use currently established catastrophe models that have been recognized by State agencies and insurance commissions; do not extrapolate results; do not downscale data except through dynamic downscaling; do not rely on steady-state assumptions of the future; and display information on uncertainty and provide understandable outputs. The commenter emphasized that adoption by standard-setting organizations demonstrates model reliability as does peer-review. To that end, the commenter asked HUD to clarify what standard of peer-review would be effective and to follow up to confirm this standard has been met.

One commenter asked if CISA flood risk areas would be publicly available online. This commenter encouraged the development of a singular, publicly available website that reflects FFRMS approved methodologies.

Several commenters expressed concern about how HUD's CISA maps will be kept up to date. Commenters noted that these forward-looking maps should be required to be updated regularly as more data becomes available. Another commenter asked whether there will be a budget to make sure the CISA tool remains up to date.

One commenter requested HUD rename CISA to CISA–F to avoid confusion with another Federal tool called CISA for the Critical Infrastructure Act.

HUD Response: As described earlier in this preamble in section II.B., CISA is the preferred approach to define the FFRMS floodplain and HUD intends to require use of CISA where data is available and actionable. HUD agrees that it is premature to rely entirely on the CISA standard which is why HUD proposed CISA as the preferred of three methodologies to define the FFRMS floodplain. HUD recognizes that CISA data is not currently available nationwide via a Federal CISA implementation tool and therefore HUD has adjusted the language of this rule to allow, but not require, the use of State, local, or Tribal CISA data if they are available and actionable, as defined in § 55.7. HUD notes that while it cannot make funding explicitly available for this rule as no congressional appropriation has been made available to do so, many HUD programs do allow funding to be used for mitigation activities such as elevation and flood resilience efforts.

[34] HUD notes that these CISA guidelines are the same Guidelines discussed in the Background section of this preamble, available at *https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11988-13690_10082015.pdf.*

HUD made the proposed rule available for both public comment and comment through interagency review. Through the proposed rule, the public had opportunity to comment on, for example, whether the FFRMS floodplain should be defined using CISA where data is available. HUD received numerous comments on utilizing CISA to determine the FFRMS floodplain and other topics. As discussed more thoroughly elsewhere in this final rule, the public also had opportunity to comment on the use of CISA outside of this rulemaking through the guidelines.

HUD intends to release subregulatory guidance to help communities better understand the CISA process and how they can use acceptable tools to map the FFRMS floodplain. While HUD will not be releasing any CISA maps of its own, HUD does intend to accept maps, tools, or resources developed through Federal or local CISA data, when that data is available and actionable, as long as those maps, tools, and resources meet the requirements outlined in § 55.7(b), (c), and (f).

HUD disagrees that the proposed rule could not be evaluated or reviewed without CISA mapping being available. The concept of CISA and associated data is well established, as outlined in the FFRMS, the Guidelines, and the White House State of the Science Report, for instance.[35] The public has accordingly had opportunity to comment on CISA generally as well as its specific proposed use in topics addressed by this rule. The FFRMS and Guidelines, which were subject to public notice and comment, provided a method for considering CISA for coastal flood hazards that takes into account regional sea-level rise variability and service life of the project. Using CISA to define the FFRMS floodplain provides a forward-looking approach to flood risk management. Available and actionable CISA data is currently most readily available along the coasts in areas with the highest risk of flooding and, in accordance with E.O. 13690 and E.O. 11988, HUD is directed to utilize the best-available and actionable data to protect Federal investments. Where CISA data isn't available or actionable, HUD has provided additional acceptable processes to define the FFRMS floodplain including the 0.2-percent-annual-chance flood approach and the FVA.

HUD appreciates the commenter's thoughts regarding the need to analyze granular property-specific data and encourages grantees to utilize best-available data when complying with this rule. HUD notes that its outlined CISA approach for identifying the floodplain is consistent with the recommended approach from the Water Resources Council Guidelines.[36]

HUD disagrees that renaming CISA to CISA–F is necessary to avoid confusion and suggests that grantees use context to help differentiate between the acronyms.

d. 0.2-Annual-Chance-Flood Approach (500-Year Floodplain Approach)

Several commenters had concerns about limitations to the 0.2-percent-annual-chance flood approach. Several commenters pointed out that FEMA maps do not usually provide an elevation for the 0.2-percent-annual-chance floodplain. One commenter noted that FEMA does not regularly produce maps that incorporate wave modeling, which makes it difficult to plan projects and for residents to understand how regulations may impact their homes. This commenter encouraged HUD to work with FEMA to incorporate wave modeling in its 0.2-percent-annual-chance floodplain maps.

One commenter asked that HUD's final rule clearly define what 0.2-percent-annual-chance floodplain can be used, wondering whether its limits need to contain the structure, be within the subject property parcel, or be within 500 feet of the nearest structure. Several other commenters wondered what data would be used to determine the 0.2-percent-annual-chance floodplain.

One commenter asked if the addition of 2 or 3 feet to existing BFE to calculate a revised flood hazard area and flood elevation results in any changes to the extent of area considered seaward of the LiMWA. This commenter asked that the 0.2-percent-annual-chance flood method reflect the potential of the LiMWA to shift, as a result of sea level rise.

One commenter worried that the effects of using the 0.2-percent-annual-chance floodplain for properties with no known or previously occurring flood risk would reduce density and property values.

One commenter asked HUD to clarify if the 5/8-step process would be triggered by improvements in a 0.2-percent-annual-chance floodplain, and asked HUD to make the FFRMS guidance clear.

HUD Response: HUD appreciates the commenter's feedback regarding the limitations of the 0.2-percent-annual-chance flood approach. When the FEMA-mapped 0.2-percent-annual-chance floodplain is unavailable, or when, for critical actions, the FVA approach is higher, HUD would allow the FVA to be utilized.

In coastal areas, actionably accurate wave models can be difficult and expensive for jurisdictions to obtain. HUD would generally agree with the commenter that including wave modeling in coastal area flood maps is beneficial to accurately depicting flood risk which is why the CISA method is preferred. HUD will continue to work with its Federal partners to support their efforts toward increasing availability of mapping and modeling in coastal areas so that the best available data may be utilized for HUD projects.

For the 0.2-percent-annual-chance flood approach with non-critical actions, the final rule requires that the FEMA-mapped 0.2-percent-annual-chance floodplain must be utilized to determine if the structure is within the floodplain of concern. Additional technical assistance and guidance will be released alongside the rule to help grantees and practitioners make appropriate determinations for their projects and help them understand when the 8-step decision making process is required. As the 0.2-percent-annual-chance floodplain is not based on climate informed data but on current FEMA mapping, it would therefore be unable to account for sea level rise over time. Additionally, HUD notes that the rule does not change the FEMA-defined Base Flood Elevation.

The RIA found no evidence that the 0.2-percent-annual-chance flood approach would reduce property values and HUD expects any density loss to be intentional based on the goal of reducing flood risk.

e. Freeboard Value Approach

Several commenters encouraged HUD to adopt the FVA as the primary approach for defining the FFRMS floodplain. Several commenters recommended use of the FVA over CISA because CISA mapping is not available for public review and the public has not been provided adequate information to assess its impacts and implications. One commenter suggested the NEPA process cannot be completed correctly using CISA maps. One commenter concluded that given the uncertainties, relying on the FVA would be most likely to ensure

[35] See *https://www.whitehouse.gov/wp-content/uploads/2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf.*

[36] HUD notes that these CISA guidelines are the same Guidelines discussed in the Background section of this preamble, available at *https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11988-13690_10082015.pdf.*

reliable and consistently documented building elevations.

Another commenter reasoned that FVA is the most accurate method of identifying flood risk and would be the most efficient use of government resources. Additionally, the commenter said FVA could be even more protective by adding two or three feet to the base flood elevation. This commenter urged HUD to consider further research into the FVA to compare the flood resiliency of HUD projects built to this increased standard to those that were not and into the possible benefits of using information in State Hazard Mitigation Plans.

Other commenters supported the FVA over the 0.2-percent-annual-chance flood approach because many sites do not have the 0.2-percent-annual-chance floodplain mapped and using the FVA across the board would result in a more consistent approach. Another commenter agreed that FVA is familiar to most stakeholders and supported its continued use given that it was HUD's previously selected method in 2016.

One commenter supported the inclusion of the horizontal floodplain when using the FVA.

Several commenters critiqued the requirement to add three feet to the BFE for critical actions, regardless of known or previous flood risk, and predicted this would lead to a reduction in density, higher costs, higher rents, and lower valuation of properties.

One commenter asked how the FVA method would account for high hazard areas that are subject to sea level rise and concurrent land subsidence.

HUD Response: HUD disagrees that the FVA should be utilized as the preferred approach to defining the FFRMS floodplain. While the FVA provides a beneficial fallback option when CISA and the 0.2-percent-annual-chance flood approach are unavailable, it does not account for sea level rise and the rising risk of flooding over time. The 0.2-percent-annual-chance flood approach is preferred to the FVA as it allows grantees to utilize existing tools to visually display the more protective horizontal extent of the floodplain. As stated earlier in section II.B., HUD requires that the FFRMS floodplain be defined using CISA where data is available and actionable, as it is the most scientifically accurate in providing impacts to the floodplain from climate change. As described in § 55.7, HUD considers CISA data to be available and actionable for a particular project where: (1) the data is included in a tool, resource, or other process developed or identified by a Federal agency or agencies to define the floodplain using CISA, and (2) HUD has adopted the particular tool, resource, or other process through a **Federal Register** notice for comment.

HUD disagrees that utilizing FVA as the preferred approach would be the most efficient use of government resources. HUD believes that the additional resilience provided by utilizing the hierarchy of CISA, then 0.2-percent-annual-chance flood approach, and finally FVA provides for a more resilient and effective use of resources than using a single approach across the board.

HUD appreciates the commenter's support for the inclusion of the added horizontal area under the FVA approach.

E.O. 13690 directs HUD to elevate critical actions at least three feet above freeboard value when using the FVA regardless of any previous flood risk at the site. While the FVA does not necessarily consider climate change because it is based on FEMA mapping of the BFE, a Federal tool for CISA is expected to be available in coastal and high-risk areas in FY24. As HUD's preferred methodology, CISA will better be able to account for sea level rise over time than other methodologies, even if they are more protective than current standards.

3. Other Alternative Approaches

One commenter suggested that HUD should consider looking to nearby areas that do have CISA resources available rather than solely relying on the two alternative approaches in the proposed rule.

One commenter requested certain public facilities such as fire and police stations, emergency medical facilities, and schools be given a heightened level of protection, and that HUD could look to more stringent standards for such structures from other entities.

One commenter asked HUD to reconsider using Advisory Base Flood Elevations (ABFE) to assess risk. ABFEs established after major flood events are often much higher than the 0.2-percent-annual-chance flood elevation, thus ABFE may result in situations where development would be required to elevate well above what the other proposed approaches would require. The commenter asked HUD to exclude ABFE from establishing elevations though, as it may not represent the true floodplain and could result in excessive fill or loss of opportunities to develop affordable housing.

One commenter noted that 0.2-percent-annual-chance floodplain elevation is not noted on FIRMS, which could lead to subjective elevation determinations by the technical experts required.

Another commenter recommended a new approach entirely, given that FEMA FIRM maps fail to account for forward-looking climate change and are not necessarily reliable with respect to historical flood risk either.

HUD Response: HUD agrees with the commenter and has revised the language of the rule at 24 CFR 55.7 to clarify that it permits a responsible entity to voluntarily define the FFRMS floodplain utilizing CISA when a State, Tribal, or local government has formally adopted, through code or other formal adoption measures, a tool, resource, or other written standards that provide data or other methods to identify the FFRMS floodplain using CISA for a particular project. HUD also notes that critical actions require a higher standard of protection, as their definition indicates, due to the potentially extreme impacts of flooding.

HUD believes that use of interim flood hazard data such as ABFEs is acceptable and that they can provide a realistic picture of the true floodplain when drawn by FEMA. While FEMA does not yet have comprehensive coverage of elevations on the 0.2-percent-annual-chance floodplain published maps, grantees will have the option of utilizing the FVA or calculating the 0.2-percent-annual-chance elevation when those elevations are unavailable from FEMA sources.

4. Questions About the Proposed CISA Approach

One commenter asked how maps would address the unpredictability of elevation sinking and if the maps would be adjusted yearly. Another commenter asked how HUD will decide what FIRM to go by and how a lender can be assured that the benchmark is accurate. This commenter also asked what happens when the FIRM is changed. Other commenters asked if flood studies would be required if there was insufficient information to establish FFRMS floodplains with one of the three approaches.

One commenter asked HUD to confirm whether the new rules apply to existing HUD-insured projects or federally funded projects seeking refinancing or acquisition and to detail all HUD Multifamily Housing programs that are expected to comply with this new guidance or any exceptions that make projects exempt or require compliance with these new rules.

HUD Response: HUD intends to provide additional guidance to grantees and practitioners to help them understand what options are available

when none of the three approaches have sufficient information to establish the FFRMS floodplain. Generally, HUD will rely on project-by-project technical assistance to help grantees find and utilize best available data to make their determinations. HUD believes that CISA tools will be regularly updated with best available climate and topographic data as outlined in the FFRMS CISA State of the Science Report.

HUD intends that the CISA provisions of the final rule will apply to any project funded by programs subject to part 55 review, including Multifamily FHA programs, in accordance with the compliance dates described in the Compliance Date section of this final rule.

B. Question #2: Whether HUD Should Define the FFRMS Floodplain for Non-Critical Actions as Whichever Is Lower Between the 0.2-Percent-Annual-Chance Floodplain or the Base Flood Elevation Plus Two Feet of Freeboard, Where CISA Resources Are Not Available

1. Support for HUD's Proposed Standard

Several commenters expressed support for whichever approach would offer the most protection when CISA is not available. Several of these commenters emphasized that the alternative proposed in Question #2 could significantly reduce flood resilience in some areas especially given that flood events are likely to become deeper and more frequent and because livelihoods, resident health, and safe homes are at stake. Another commenter said that any reduced short-term cost in using the less stringent approach would come at greater long-term expenses and would run counter to the risk management approach identified by the Government Accountability Office. The commenter also noted that models may underrate flood risk and the more protective approach is justified by the precautionary principle.

Another commenter urged HUD to consider collaboration with other agencies to gather data for critical actions in the proposed FFRMS floodplain.

HUD Response: HUD appreciates the feedback from commenters regarding the need for higher elevation standards and protections as flood events worsen due to climate change. The intent of HUD's preference for the CISA option is to be more proactive and protective as flood risks increase over time and to use the best science available at the time the project is considered. HUD believes that the process for using the 0.2-percent-annual-chance flood approach or the FVA when CISA is not available or actionable provides a protective and efficient process that is not only more likely to provide a more protective approach but also reduce administrative burden (*e.g.,* comparison between the 0.2-percent-annual-chance flood approach and FVA elevations).

For critical actions, where comparison between the 0.2-percent-annual-chance flood approach and the FVA +3 feet elevations is necessary, HUD believes the extra analysis is warranted to ensure more protection for those actions for which any risk of flooding is simply too great. HUD is also supportive of further collaboration with other agencies to analyze data on critical actions as it becomes available.

2. Support for the Lower Standard

Several commenters asked HUD to allow for the lower standard for non-critical actions. These commenters were concerned about incentivizing excessive fill in 0.2-percent-annual-chance floodplains.

Several commenters suggested that the FVA method should take preference over the 0.2-percent-annual-chance flood approach as it is easier to calculate. Some of these commenters went onto suggest that a site-specific flood study would be the best option.

HUD Response: HUD disagrees with commenters' feedback that lower standards should be used for non-critical actions. Since flood risks are increasing as a result of climate change and associated sea level rise, lowering the current regulatory standard on top of this increased risk would create an exponentially riskier environment for Federal investments and go against HUD's stated goals. HUD also disagrees that higher standards create incentive for fill as elevation does not necessarily require fill. In fact, the rule no longer provides an exemption for LOMR based on fill, further disincentivizing its use.

HUD disagrees that the FVA method is easier for grantees and practitioners to calculate than the 0.2-percent-annual-chance flood approach. The 0.2-percent-annual-chance floodplain is mapped by FEMA and where it is available for non-critical actions, grantees would not need to calculate anything. While HUD agrees that site-specific flood studies can be helpful, requiring them for all projects would be prohibitively expensive.

C. Question #3: Whether, and Under What Conditions, Part 55 Should Permit HUD or the Responsible Entity To Rely on the FFRMS Floodplain as Defined by Another Federal Agency

1. Support for Alignment With Other Agencies

Several commenters supported HUD using FFRMS boundaries established by other agencies to reduce redundancy in Federal oversight. These commenters also requested a process by which a stakeholder could request a reconsideration of HUD's floodplain boundaries.

Several commenters urged a cohesive and consistent Federal vision when there are multiple flood risk related efforts occurring simultaneously to avoid conflicting standards and potential noncompliance. One commenter noted the weaknesses inherent in not having a comprehensive nationwide approach to defining floodplains. This commenter encouraged HUD to include requirements for tracking the location and quantity of developments in floodplains as part of its 8-step decision making process. The commenter urged collaboration among Federal agencies to track and quantify the effectiveness of E.O. 11988 and E.O. 13690. Specifically, this commenter recommended that Federal agencies collaborate with the National Floodplain Functions Alliance.

One commenter suggested Federal agencies align their resilience and disaster response policies, including building codes and elevation requirements.

One commenter expressed support for a process whereby a project's lead Federal agency's implementation of FFRMS is sufficient for the entire project, as long as such approach looked at long-term risks.

More broadly, several commenters asked that HUD participate in collaboration with other agencies, affiliations, and interagency groups.

Several commenters stated that the Federal Interagency Floodplain Management Task Force (FIFM–TF) is an existing interagency body to facilitate collaboration and ensure that all agencies are using a forward-thinking, climate-informed approach. One commenter noted that HUD should rely on FIFM–TF policies, as long as its deliberations are more transparent and accessible to interested non-Federal stakeholders. This commenter suggested that since various Federal agencies have developed tools, data, and expertise, that collaboration would lead to more consistent CISA floodplain definition methods.

Several other commenters endorsed HUD's cooperation with the White House Flood Resilience Interagency Working Group. Some of these commenters said HUD should prioritize funding and interagency coordination, including continued participation in this working group. One commenter was concerned that the working group would not have enough resources available to accurately identify flood risks throughout the country. Another commenter asked who in this working group is preparing the CISA tools and whether they have any conflicts of interest between potential consultants working on these resources.

Several commenters urged HUD to rely on FEMA and its flood-risk data and to engage with FEMA to ensure complementary approaches as the agencies implement FFRMS through rulemaking. Another commenter emphasized that FEMA has spent billions of dollars on flood engineering studies and that adopting an alternative flood map dataset would waste previous Federal investments. The commenter went on to say that other entities, such as States, cities, and communities, have come to rely on FEMA's flood map data for various purposes. Another commenter noted that because FEMA is actively working to incorporate climate risk and future conditions into its data and mapping program, HUD should delay finalizing the proposed rule and continue to rely on FEMA's flood risk and mapping tools until its formal release of climate-informed flood risk data and flood maps.

One commenter supported coordination between HUD, FEMA, USACE, and other agencies to consistently articulate flood risks and best practices. This commenter reasoned that a comprehensive Federal narrative would allow for consistency and transparency for owners, local decision makers, and regulators as opposed to the current contradicting flood risk identification efforts.

One commenter suggested that HUD align its disaster recovery and mitigation construction standards with FEMA's Building Resilient Infrastructure and Communities and Public Assistance Programs, which have been successfully implemented for several years. The commenter said that adopting the flood provisions captured in modern building codes consistently across like programs would help the Federal government reduce complexity and increase programmatic efficiency.

One commenter asked that HUD share what it learns from developing CISA mapping tools with other Federal agencies.

HUD Response: HUD's outlined process in the rule requires the use of Federal CISA data where available and actionable, as described in § 55.7, or permits the voluntary use of formally adopted local CISA data, as described in § 55.7(f). A Federal agency tool is being developed by the Council on Environmental Quality (CEQ), the Office of Science and Technology Policy (OSTP), FEMA, NOAA, and HUD with input from the White House Flood Resilience Interagency Working Group and the FFRMS Science Subgroup. The Science Subgroup of the White House Flood Resilience Interagency Working Group has found that accounting for sea level rise in the coastal environment represents available and actionable data to help identify the CISA floodplain. The White House Flood Resilience Interagency Working Group has developed a job aid to help agencies identify the floodplain using the three approaches.[37] This job aid will help provide consistency of FFRMS application across the Federal Government.

Where Federal CISA data is not available and actionable, as provided in § 55.7, and grantees or practitioners use local, State, or Tribal CISA data, the 0.2-percent-annual-chance flood approach, and/or FVA, there may be some variation in the exact horizontal and vertical extents of the FFRMS floodplain depending on the approach that is utilized. HUD does not believe that these variations are likely to be significant and further believes that minor floodplain variation is worth the greater protection that the methodology in HUD's rule provides. HUD's rule does not define the boundary of the floodplain, only a methodology for determining where that boundary is. HUD does not intend to implement a formal process to contest the methodology used to define the floodplain at this time but will continue to monitor and make changes to policy, as necessary, to ensure effective determination of the FFRMS floodplain.

HUD agrees with the commenter that Federal disaster response policies, inclusive of their floodplain management policies, should be complementary and cohesive. As such, HUD drafted this rule to align with the E.O. 13690 guidance. Additionally, HUD appreciates the commenter's encouragement for HUD to continue cooperating with the White House Flood Resilience Interagency Working Group.

[37] See *https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf.*

HUD's Federal partners are also engaging in rulemaking to update FFRMS floodplain requirements to comply with E.O. 13690. HUD cannot wait for these other agencies' rules and must act to protect its own investments which are otherwise at risk. However, each agency, including HUD, is developing these regulations with feedback provided through a required interagency review process which occurs prior to publication of any proposed and final rulemaking.

In cases where a Federal project is funded by multiple Federal funding sources, HUD plans to utilize the Unified Federal Review (UFR) to assist in the collaborative cross-agency/Department discussions to resolve compliance issues and ensure cohesion in project funding and goals. Additionally, HUD has procedures in place to adopt the environmental reviews of other Federal agencies to avoid unnecessary duplication of effort.

HUD supports its interagency partners and is always looking for new opportunities to work with other industry leaders in addition to other Federal agencies. While HUD agrees with the general sentiment behind adopting resilient building codes, HUD does not believe this rule is the proper place to include them.

2. Concerns With Relying on Other Agencies To Define the Floodplain

Several commenters expressed concerns regarding HUD relying on another agency's definition of FFRMS floodplains.

Several commenters said that HUD must ensure it is addressing resident health and safety as well as economic-related flood disaster relief in setting its floodplain determination, urging HUD to only rely on another agency's designation of FFRMS floodplain where that agency's methodology is at least as rigorous as HUD's; in other words, rely on whichever generates the highest elevation and most expansive horizontal floodplain. Another commenter similarly expressed concern for adopting other agencies' floodplain policies because they believe that HUD's proposed rule likely better protects wetlands. The commenter said that HUD should not rely on other Federal agencies at a time when the USACE's analysis for wetlands has changed through proposed rulemaking and the Supreme Court case *Sackett* v. *EPA*[38] regarding the definition of ''waters of the United States.''

Several commenters suggested that by not relying on FEMA's maps in its

[38] 598 U.S. 651 (2023).

proposed rule, HUD is indicating that FEMA's maps cannot be relied upon. Specifically, one commenter said the language that an interim or preliminary FEMA map could not be used if it is lower than the current FIRM or FIS indicates the FEMA maps cannot be relied upon for accurate flood risk data.

HUD Response: HUD agrees that it should avoid relying on another agency's definition of FFRMS floodplains. E.O. 13690 requires agencies to utilize one of the processes (CISA, 0.2-percent-annual-chance flood approach, FVA) based on best-available information and FIRMS from FEMA to define the FFRMS floodplain.

HUD is looking for the most scientifically prudent elevation based on available data that will provide protection of life, property, and the Federal investment. Using the CISA approach, HUD's preferred method, will likely result in the most protective elevation based on scientific data compared to other methods.

HUD believes that FIRMs provide an accurate point in time snapshot of flood risk. Unfortunately, these risks are continually changing and given the time horizon for FIRM updates they may be generally less accurate than HUD would prefer. The FFRMS approaches outlined in HUD's final rule allow for greater protection in the face of changing needs and uncertainty than a floodplain management approach solely based on FEMA's mapped BFE boundary.

D. Question #4: What Factors or Stakeholder Needs HUD Should Consider When Establishing an Effective Date for This Rule

1. Support for Extended Effective Date

Several commenters urged HUD to extend the effective date of implementation to at least one year after issuing this rule to avoid unforeseen expenses and delays for projects already in planning stages because development planning often begins years prior to land acquisition and formal planning processes. Of those commenters, several raised concerns that absent extension, developers would bear unequitable financial losses due to changes in land value purchased, revisions to plans, and resulting delays.

One commenter specifically urged HUD to include a grandfathering provision that would allow new Community Development Block Grants (CDBG) and HOME Investment Partnerships Program (HOME) awards, as well as FHA multi- and single family projects already under development and applications submitted prior to the effective date to proceed under current regulations. This commenter reasoned that if developers had to repeat the lengthy planning, platting, and government approval process for new development under changed regulations, they would be forced to engage in more consultation, negotiation, and compromise among all project stakeholders. This commenter added that the planning process for FHA insured projects is particularly lengthy.

Several commenters urged HUD to consider stakeholders' need to access the CISA maps prior to implementation, stating that it is impossible to examine implications of the rule absent sufficient review of the CISA method that the rule relies upon. Several commenters suggested that stakeholders needed at least one year to access the CISA maps prior to implementation. One commenter urged HUD to delay implementation until the CISA maps are available and approved and asked when HUD expected the tools will be made available.

Several other commenters went further, asking HUD to factor in time to engage industry stakeholders in developing the CISA mapping tool prior to implementing this rule. One commenter reasoned that improper development of this tool, or reliance on problematic data, could negatively impact industry stakeholders (*e.g.,* developers, insurance providers, floodplain mapping experts).

One commenter sought HUD's consideration that large public housing authorities need time to determine the impact of the regulation on costs of rehabilitation and repair, including a portfolio-wide review of covered properties and a building-by-building analysis. This commenter estimated that this review would take at least a year after final rule issuance.

One commenter suggested that HUD consider the potential positive result that proposed FHA mortgage requirements may incentivize communities to adopt 2-foot freeboard standards matching the HUD Minimum Property Standards, so that all development in special flood hazard areas will maintain qualification for FHA-insured mortgages. This commenter suggested that HUD extend the effective date for FHA mortgage requirements by one year to allow this commenter and other stakeholders to assist communities in updating their floodplain management codes. For all other aspects of the rule, this commenter urged HUD not to extend the effective date.

HUD Response: HUD appreciates the feedback from commenters regarding concerns over ongoing projects incurring unforeseen expenses and delays. As such, HUD is setting a delayed compliance period for the rule. Compliance with this final rule is required no later than 30 days after the rule becomes effective, except compliance with the amendments to 24 CFR part 200 is required for new construction where building permit applications are submitted on or after January 1, 2025, and compliance with the amendments to 24 CFR part 55 is similarly required no later than January 1, 2025, for FHA programs and programs subject to the MAP Guide, as more thoroughly described in the Compliance Date section of this final rule. This delayed compliance period will provide regulated entities time to come into compliance with this rule, including the portions of the rule implementing the Minimum Property Standards. HUD believes this delayed compliance period will allow ample time for project sponsors to prepare for any increased costs for compliance with the rule. Additionally, HUD notes that projects currently in development which have completed environmental reviews would not be required to backtrack for compliance.

HUD disagrees that stakeholders require access to CISA maps prior to implementation. After this rule becomes effective, CISA maps will not be used if they are not available and actionable. The three-tiered approach to define the FFRMS floodplain adopted by this rule will allow responsible entities to utilize the best available data and tools in their area to understand and mitigate their flood risk. As described in § 55.7, where State, Tribal, or local jurisdictions have already invested in data and modeling and created CISA data and tools, HUD permits the voluntary use of those tools if they result in an elevation that is at least as high as the lowest of (1) the 0.2-percent-annual-chance floodplain elevation; (2) the elevation that results from adding an additional two feet to the base flood elevation; or (3) the elevation required by paragraph (b) or (c) of § 55.7, if CISA data is available and actionable under paragraphs (b)(1) or (c)(1).

Federally assisted multifamily housing, especially housing for low-income and vulnerable populations, including the public housing portfolio, is currently in need of the additional flood mitigation and resilience requirements the rule requires. The rule will ensure that as properties undergo rehabilitation, flood mitigation and resilience will be incorporated. HUD does not believe it is appropriate or necessary to delay the implementation

of the part 55 update of this rule for additional study.

2. Support Implementing as Soon as Possible

Several commenters asked HUD to consider the urgent need to mitigate loss of properties and lives, along with the health and financial inequalities exacerbated by increasing flooding events, citing statistics on projected increases in flooding and disparate impacts of these events. Another commenter asserted that an effective date no later than January 1, 2025, would provide ample time for development stakeholders to prepare for implementation.

One commenter urged consideration of the number of HUD-supported new construction and substantial improvement projects that will or will not have enhanced resiliency and flood protections, depending on any delays to implementing this rule.

Another commenter suggested that HUD should consider the regulatory impact findings that the reduction in financial damages over the life of the project is greater than the one-time construction cost increases necessary for implementing the rule. This commentor also urged HUD to consider its knowledge of these impending requirements since at least 2015 as a factor supporting prompt implementation, with an effective date of no later than one year.

HUD's Response: After reviewing public comments, HUD has determined to provide a delayed compliance period to allow entities regulated by this rule a grace period to come into compliance with the revised requirements. Compliance with the amendments to part 200 of this rule is required for new construction where building permit applications are submitted on or after January 1, 2025. This delay is intended to provide home builders ample opportunity to adapt and prepare for the requirements of this rule, including the increased elevation standards. Compliance with the amendments to 24 CFR part 55 is similarly required no later than January 1, 2025, for FHA programs and programs subject to the MAP Guide, as more thoroughly described in the Compliance Date section of this final rule. Compliance with all other parts of this rule and for all other programs, except for those noted for parts 200 and 55, is required no later than 30 days after the rule becomes effective.

3. Additional Considerations

One commenter suggested that HUD consider the Supreme Court's decision on the Clean Water Act's definition of ''waters of the United States'' in *Sackett* v. *EPA.*

HUD's Response: HUD appreciates the feedback from commenters; however, HUD's definition of a wetland is unaffected by the Supreme Court's ruling in *Sackett vs. EPA* because HUD's wetlands definition originates from E.O. 11990, not from the Clean Water Act.

E. Question #5: Feedback on Exception Requiring the More Protective FVA Approach for Coastal Areas

Several commenters continued to recommend the most protective standard, supporting HUD's excepted use of the FVA standard in coastal areas. One commenter reasoned that wave action, sea level rise, land subsidence, warmer seas, and intensification of tropical storms/hurricanes compound uncertainty in coastal areas. Another commenter supported the higher standard to increase flood protection in areas where the mapped floodplain may not accurately reflect risks from wave action. Another commenter reasoned that the higher standard for coastal areas is necessary due to particular vulnerabilities of coastal communities to tidal flooding.

One commenter suggested that HUD's final rule should allow for the flexibility to use the most protective and up to date science in coastal regions or where higher quality data and analytics are available.

One commenter asked about HUD's plan for renovations in order to eventually have all projects in accordance with the new standards, and what the projected date is to achieve that plan. The commenter also asked, if there is no plan, whether one can be added to protect sustainability of coastal projects.

Other commenters opposed the higher standard for coastal areas, urging HUD to use a consistent approach in defining the FFRMS floodplain. These commenters suggested that compliance is stronger when the rules are consistently applied and easy to understand and recommended the FVA approach in all circumstances.

HUD's Response: HUD appreciates the commenters' preferences regarding the use of the most protective standard; however, HUD intends to retain the three-tiered decision making process to define the FFRMS floodplain as originally proposed to avoid complicating the process for builders and grantees. While HUD certainly encourages grantees to use the most protective approach where CISA isn't available or actionable, the Department believes that requiring grantees to look at both the FVA and 0.2-percent-annual-chance flood approach is unnecessary for noncritical actions. Instead, HUD will require review of both 0.2-percent-annual-chance flood approach and FVA to determine elevation heights only for critical actions. HUD believes that CISA tools will likely be available in coastal areas more quickly than inland locations and as such, should help to better determine the effects of sea level rise and wave heights for those structures.

HUD believes that a tiered approach with a preference for using CISA, where possible, before considering the 0.2-percent-annual-chance flood approach and/or FVA approaches, allows for the best outcome of both protectiveness and functionality for HUD grantees and recipients.

It should also be noted that the Federal funding action is the trigger for NEPA and part 55 compliance. Where a HUD-funded or -insured action is proposed, an environmental review meeting part 55 requirements is required. HUD will not be enforcing these requirements retroactively for projects with a completed environmental review.

F. Question #6: Feedback on Alternative Measures That May Help To Promote the Production and Availability of Affordable Housing in the Near-Term While Still Promoting Flood Resilience

1. Arguments That HUD's Proposed Rule Will Impede Affordability and Housing Supply

Several commenters raised concerns that development restrictions and/or increased costs to comply with proposed requirements would chill interest and ability to develop, operate, or rehabilitate affordable housing, resulting in higher rents and housing costs, limited ability to borrow, and/or unattainable loans. Additionally, several commenters stated that increased compliance costs will result in borrowers deferring or foregoing repairs and upgrades to existing affordable housing.

One commenter disagreed with HUD's projected construction costs, asserting that HUD relied upon an outdated 2013 FEMA study, which fails to account for inflated input prices, supply chain challenges, and labor challenges. This commenter also questioned HUD's certification that there is no significant economic impact on small entities, citing that 88 percent of homebuilders and specialty contract firms are self-employed independent contractors. The commenter provided its own survey of builders, finding that elevating single-

family home to two feet above BFE would add $5-$10 thousand dollars to cost of construction; and costs would be even higher where builders prefer slab foundations due to humidity, which are more expensive to elevate than homes on piers. Further, this commenter conducted the following analysis of the impacts of cost increases on homeowners and renters: a $1,000 increase in median home price would price 140,436 households out of the market; a $1,000 rent increase per unit would price out an additional 32,289 renters.

Several commenters explained that elevation requirements would cause increased transportation costs for soil import from certified fill sites and earthwork and compacting costs of the additional fill.

Several commenters specifically identified the requirement to maintain flood insurance as causing additional operating costs, which will be passed along to residents in the form of higher rents and housing costs. Several commenters stated that it is unlikely that insurance costs for homeowners or multifamily owners will decrease sufficiently to offset the increased construction costs, asserting that HUD did not provide evidence that insurance costs will decline.

One commenter stated that limiting the current streamlined 203(k) loan to $35,000 in renovations means that it may not be a lending option for borrowers mandated to raise substantially damaged properties to BFE +2 feet.

Several commenters noted that affordable multifamily building and rehabilitation projects may be deferred, scaled back, or foregone where increased costs cannot be offset by increased rent, preventing delivery of needed housing supply. Several of these commenters reasoned that there is a direct correlation between Federal housing policies impacting housing supply and affordability and homebuilding stakeholders' willingness to create affordable housing supply.

One commenter noted that underproduction of housing has translated into higher housing costs, resulting in a decline in the number of affordable units currently available. This commenter outlined difficulties facing housing providers—narrow margins, ongoing labor and material challenges, elevated regulatory costs—and cited recent surveys indicating that 79 percent of developers reported construction delays, with almost half citing project infeasibility as the cause.

One commenter stated that the proposed rule's floodplain expansion will reduce opportunities to develop HUD projects in low-lying areas and thus reduce housing for low-income families, who are in turn less likely to be able to afford relocation.

HUD Response: HUD appreciates the commenters' feedback about their concerns that additional elevation requirements could increase costs and chill investment in future housing. HUD acknowledges that the additional elevation requirements from the increased elevation standards proposed to the Minimum Property Standards and the increased regulatory footprint proposed in the part 55 update could have additional costs associated with them. In the RIA, HUD found that the increase in construction costs for new residential structures of elevating an additional 2 feet above BFE would average between 0.3 and 4.8 percent of the building cost. HUD contends that the benefits of protection provided by these mitigations are greater than the cost of compliance. In fact, the RIA shows that the lower bound for losses avoided based on the updated part 55 provides more than $50 million in benefits even using the higher 7 percent discount rate. Federal investment in the construction of multifamily and/or public housing in riskier areas prone to flooding does not increase the availability of safe affordable housing units. It is HUD's goal to disincentivize continued Federal investment in high-risk flood-prone areas.

Short term market volatility in prices and labor is a poor indicator for regulatory decisions and those factors are instead looked at in aggregate over longer study periods. HUD reviewed the best available studies and stands by the construction costs and potential impacts on builders of all sizes as outlined in the RIA.

HUD strongly disagrees that elevation requirements would cause any change in transportation costs for fill. In its rule, HUD is not mandating how elevation is achieved; therefore, grantees are free to utilize methods of elevation that do not involve fill. Additionally, with the removal of the exemption for LOMRs based on fill, HUD is actively discouraging its use as a method for elevation.

With this rule, HUD is not changing its requirements for maintaining flood insurance, which are mandated by statute. Therefore, HUD disagrees that utilizing existing requirements will increase operating costs. HUD grantees have also always had the ability to extend flood insurance requirements beyond those established as the minimum by HUD. Additionally, HUD notes that HUD's encouragement for the purchase of flood insurance outside the 1-percent-annual-chance floodplain is not a requirement.

HUD has decided to remove the elevation requirement for substantial improvement under the Minimum Property Standards to avoid adversely impacting homeowners renovating existing single-family homes. While HUD appreciates the commenter's feedback regarding 203(k) loans, Standard 203(k) financing allows a homeowner to finance improvements with an insured mortgage that may be based on a loan-to-value ratio using 110 percent of after improved value of the property. Regarding Limited 203(k), on November 29, 2023, HUD published a draft Mortgagee Letter (ML), *Revisions to increase the Maximum Rehabilitation Costs for Limited 203(k), Rehabilitation Period for both Standard and Limited 203(k), and Consultant Fees Schedule for the 203(k) Rehabilitation Mortgage Insurance Program (Section 203(k) Program),* for feedback on the FHA's Office of Single Family Housing Drafting Table. The ML proposes to expand the rehabilitation costs for Limited 203(k) from $35,000 to $50,000 and to $75,000 for high cost areas.[39]

2. Arguments That HUD's Proposed Rule Will Improve Housing Affordability

Several commenters asserted that property resilience investments are necessary to increase affordable housing at individual and/or government-wide levels.

Several commenters suggested that reduced property damage and broader socio-economic costs (*e.g.,* displacement) created by this rule outweigh potentially increased construction costs for projects in flood-prone areas, in turn increasing housing affordability. One commenter cited evidence that the number of affordable housing units at risk from coastal floods and sea level rise is expected to triple over the next 30 years.

Several commenters stated that it is incorrect to measure the costs of flood resilience requirements solely by increased construction costs/home prices because the cost of homeownership also includes costs to live in, maintain, and insure a home over time, especially homes subject to recurrent natural disasters that may become uninhabitable (and the broader cost of communities becoming uninhabitable).

[39] The draft ML is available at *https://www.hud.gov/program_offices/housing/sfh/SFH_policy_drafts.*

Another commenter cited evidence that the savings benefits of building to modern building codes come without negatively impacting housing affordability, stating that no peer reviewed research finds otherwise. This commenter cited findings that insurance savings from meeting mitigation requirements can reduce homeowners' net monthly mortgage and flood insurance costs by at least 5 percent, balanced against about half a percentage point increase in home purchase price for improvements to model resilience codes in an area affected by riverine floods.

Another commenter suggested that the proposed rule mitigates increased construction costs through its identification of practicable alternatives and provision of technical assistance to help recipients comply with new standards.

One commenter argued that disaster resiliency standards will lessen reliance on HUD to rebuild and replace community assets damaged by natural disasters, allowing HUD to prioritize programs that increase the stock of affordable housing and availability of mortgage insurance. This commenter provided examples of post-flood closures of multifamily units precipitating negative shocks to local housing markets.

Several commenters pointed to jurisdictions and programs that already require greater elevation standards and requirements than HUD as demonstrating that stronger standards are feasible and cost-effective.

One commenter urged that the demonstrated long-term financial benefits of flood adaptation (citing a 6:1 benefit-cost ratio for HUD- and FEMA-supported mitigation measures) should be extended to affordable housing residents.

Another commenter supported measuring/scoring property-level risks across the spectrum of environmental hazards, providing government and private stakeholders with insight to balance the costs and benefits of adding finely tuned/tailored resiliency measures to building codes.

HUD's Response: HUD appreciates the commenter's sentiment that property resilience investment from the Federal level is necessary to increase affordable housing. HUD agrees that the reduced property damage and broader socioeconomic benefits created by this rule outweigh the additional cost of compliance for flood-prone areas. This is even more important in areas that may be affected by climate change.

HUD appreciates commenters' feedback regarding the measurement of the cost of flood resilience. While HUD agrees that the cost of a community becoming uninhabitable over time would have more devastating effects than simply more expensive housing, it is unfortunately difficult to quantify those consequences outside of their direct economic impact. Generally, HUD agrees with the commenter's sentiment that the savings benefits of modern building codes on housing outweigh any impacts on housing affordability. HUD has previously and will continue to help grantees review practicable alternatives when project costs are too high to build due to elevation requirements.

HUD generally agrees with the commenter's feedback that the increased resilience standards should help avoid damages from future flood disasters and thus increase the longevity of new affordable housing. HUD appreciates its local partners that have already demonstrated the effectiveness and feasibility of higher standards in their communities.

3. Suggested Revisions Commenters Believe Will Help Promote Affordable Housing

One commenter suggested that HUD amend the rule to provide greater financial flexibility to design and construction firms by quantifying design/construction-related costs to achieve the FFRMS as deferred maintenance instead of substantial improvements.

Another commenter suggested that HUD proactively target financial and technical assistance to support low-income and historically disadvantaged communities, stating that opportunities recently codified by the Community Disaster Resilience Zones Act, Public Law No. 117–225 could be instrumental.

One commenter urged HUD to increase per unit maximums and provide waivers where necessary (*i.e.,* match requirements) to ensure that communities in which the entire buildable area is within newly designated floodplains do not confront such high costs as to effectively cut off HUD funding.

One commenter urged HUD to revise the flood elevation measurement for manufactured homes to be consistent with the site-built homes measurement, to ensure that manufactured homes remain cost effective. This commenter reasoned that expanding the supply of manufactured housing is a crucial component of preserving affordable housing and that a large number of manufactured homes are located on floodplains.

HUD's Response: HUD believes that for the purposes of compliance with floodplain mitigation requirements under part 55, rehabilitation needs to be considered substantial improvement when the costs are more than 50 percent of the value of the structure and/or they include the expansion of units by more than 20 percent. HUD notes that simply because a project is considered a substantial improvement does not mean that that project cannot move forward under the current part 55 requirements. Part 55 simply adds mitigation requirements to ensure that the overall structure is more resilient. Even in communities where large swaths of the buildable area fall into the regulatory floodplain of concern, the requirements do not prohibit building; they require mitigation to ensure new construction is safe. HUD notes that § 55.21 also provides an alternative process for existing nonconforming sites meeting specific thresholds for protectiveness to continue to receive support and avoid cutting off existing communities from Federal funding.

HUD agrees with the commenter's feedback that HUD funding programs and technical assistance should benefit low-income and historically disadvantaged communities. Such benefits are explicit requirements for many HUD funding programs and are included in Goals 1 and 2 of HUD's Strategic Plan: Support Underserved Communities and Ensure Access to and Increase the Production of Affordable Housing.

HUD agrees with the commenter about consistent regulations and HUD has and will continue to require that manufactured housing requirements be consistent with those for stick-built homes with regards to part 55 elevation requirements. Under part 55, new siting and substantial improvement of manufactured housing units (MHUs) are considered the same as new construction and substantial improvement for stick-built homes and therefore subject to the part 55 elevation requirements. To clarify this policy, HUD has revised the rule language to reference MHUs in the definitions for new construction and substantial improvement.

Further, for both manufactured homes and stick-built homes subject to part 55, to determine the lowest floor, HUD looks to FEMA's regulations in 44 CFR 59.1 and FEMA's Elevation Certificate guidance or other applicable current FEMA guidance. For manufactured homes in A Zones, FEMA recommends measurement of MHU elevation from the I-beam as a best practice. HUD recommends following FEMA best practice where feasible. For manufactured homes in coastal high

hazard areas (Zone V), FEMA requires measurement of MHU elevation from the bottom of the lowest horizontal structural member (*e.g.,* the I-beam).

It is important to note that FHA-insured single family housing is not subject to part 55 and that FHA-insured manufactured housing is not subject to part 55 or to the 24 CFR 200.926d elevation standards under this final rule. Eligibility requirements, including elevation standards, for FHA-insured manufactured housing can be found at 24 CFR part 3285: Manufactured Home Installation Standards and 24 CFR 203.43f: Eligibility of Mortgages Covering Manufactured Homes, as applicable, which are outside the scope of this rulemaking. HUD understands that the part 55 elevation requirements for MHUs differing from the FHA insured MHU requirements may lead to confusion where HUD programs subject to part 55 are installing MHUs. To address this, HUD intends to release guidance and technical assistance material focused on these MHU requirements which should help project sponsors and responsible entities ensure compliant programs.

HUD agrees with commenters that wish to minimize the disruption to the delivery of affordable housing. As such, after reviewing public comments, HUD has determined to provide a delayed compliance period to allow entities regulated by this rule a grace period to come into compliance with the revised requirements. Compliance with the amendments to part 200 of this rule, including the update to the Minimum Property Standards, is required for new construction where building permit applications are submitted on or after January 1, 2025. This delay is intended to allow home builders and developers ample opportunity to adapt and prepare for the requirements of this rule. For FHA programs and programs subject to the MAP Guide, compliance with the amendments to 24 CFR part 55 is similarly required no later than January 1, 2025, as more thoroughly described in the Compliance Date section of this rule. Compliance with all other parts of this rule and for all other programs, except for those noted for parts 200 and 55, is required no later than 30 days after the rule becomes effective.

4. Additional Suggestions To Promote Resilient and Affordable Housing

Several commenters urged HUD to pair efforts to make floodplain housing more resilient with a focus on affordable housing development outside of floodplains and solving how to accommodate growing housing need as floodplain housing becomes increasingly uninhabitable. One commenter reasoned that focusing affordable housing development outside floodplains and wetlands will counter longtime exclusionary zoning practices and direct scarce financial resources to building affordable housing instead of mitigation activities. However, this commenter stated that HUD should still fund rehabilitation of existing affordable housing in floodplains through programs like Community Development Block Grants for Disaster Recovery (CDBG–DR) to prevent displacement. This commenter outlined their view of three root causes of the current shortage of affordable housing—Congress consistently underfunding housing subsidies; Congress's decade's long divestment in existing public housing; and a severe lack of disaster housing resources and the use of those limited funds for non-housing costs, and those funds disproportionately benefit homeowners over renters. Another commenter suggested that HUD proactively fund buyouts with relocation assistance for persons living at properties that have experienced severe repetitive losses.

One commenter urged HUD to take the following additional measures to promote production and availability of affordable housing: (1) require HUD CDBG–DR and Community Development Block Grants for Mitigation (CDBG–MIT) grantees to rebuild public and affordable housing on a one-for-one basis, deeply affordable in lower-risk areas and in a manner that affirmatively furthers fair housing (AFFH); (2) ensure that the right to return to communities is not conditioned on returning to high-risk area; (3) ensure that grantees are using funding to redress historical disinvestment in infrastructure—including flood protection infrastructure—in low-income communities and communities of color; (4) carry out Department AFFH obligations and ensure that HUD holds grantees accountable for complying with civil rights obligations on which Federal funding is conditioned; and (5) ensure that subsidies, including Housing Assistance Payments (HAP) contracts, can be easily transferred to new sites and require a new assessment before HAP contracts are renewed following a flooding event.

Another commenter urged HUD to consider ways to expedite the regulatory process for affordable housing projects, while ensuring they follow proposed requirements.

HUD's Response: HUD appreciates the commenters' feedback regarding making floodplain housing more resilient by encouraging development outside the floodplain where feasible. The 8-step decision making process does require project sponsors to consider alternatives to any development plans in the floodplain. HUD encourages this alternatives analysis to consider other more resilient sites located outside the floodplain.

While HUD does not consider this rulemaking the appropriate place to consider changes to disaster assistance funding or other HUD programs, HUD appreciates the commenters' enthusiasm for Federal assistance directed towards increasing affordable and resilient housing. HUD notes that individual HUD programs may introduce program specific guidance or policy to more efficiently implement FFRMS requirements.

F. Question #7: Feedback on the Proposed FHA Single Family Minimum Property Standards

A discussion of the comments received regarding the FHA single family Minimum Property Standards can be found in this Public Comments section of this final rule in the subsection titled *Minimum Property Standards for 1–4 unit residential structures.*

G. Question #8: Whether Provisions of the Proposed Rule Will Redress, Perpetuate, or Create Any Disproportionate Adverse Impact Against Any Group Based on Race, National Origin, Color, Religion, Sex, Familial Status, or Disability, as Well as How HUD Can Further Incorporate Equity Considerations Into This Proposed Rule To Help HUD Meet Its Affordable Housing and Community Development Mission

1. Proposed Rule Promotes Equity

Several commenters stated that the proposed rule's blended climate and equity lens will contribute to redressing disproportionate adverse impacts faced by protected classes; and that allowing communities of color and low-income communities to endure elevated flood risk would perpetuate systemic inequalities.

Several commenters specifically supported requiring inclusion of environmental justice public engagement in the 8-step decision making process. Several commenters added support for HUD's plan to issue policy guidance on environmental justice.

Several commenters stated that replacing the misleading 1-percent-annual-chance flood approach with the CISA approach will ensure more

accurate accounting for hazard risks to federally assisted housing. One commenter explained that this is essential to promote wealth retention in Black, Hispanic, Indigenous, and low-income communities harmed by centuries of inequitable resource allocation and exposure to natural and artificial hazards, including heightened exposure to hazardous flooding and inequitable distribution of disaster aid.

HUD Response: HUD appreciates the commenter's feedback regarding climate and equity. It is the Department's goal to fully implement the goals and objectives of E.O. 14096, including to identify and address disproportionate and adverse human health or environmental effects of the Department's programs, policies, and activities on communities with environmental justice concerns, while also working to be more protective and promote resiliency to flooding. HUD agrees with the commenter's sentiment that CISA should help to better account for and reduce hazard risks to federally assisted housing. HUD also agrees that housing is an essential component to generational wealth building and that ensuring its resilience in the face of flooding helps communities build into the future.

2. Proposed Rule Perpetuates or Creates Disproportionate Adverse Impacts on Protected Classes

a. Inequities Perpetuated by Continued Development in High-Risk Areas

Several commenters raised concerns with provisions of the proposed rule that they assert would perpetuate or create disproportionate adverse impacts on protected classes, citing evidence showing the following: a disproportionately high percentage of low-income, minority, and other communities that are vulnerable to flooding live in high-risk areas; communities of color face disparate adverse impacts of flooding (both in rate of flooding and damage caused by flooding), as well as face challenges with access to post-disaster resources and rehabilitation. One commenter cited evidence that flood risk will increase by 26 percent by midcentury and would be disproportionately high for Black communities, with population growth in flood-prone areas accounting for 75 percent of that increased risk (and 19 percent caused by climate-related flood impacts).

Several commenters asserted that even with the administrative steps of § 55.20, the exemptions in part 55 allowing continued housing development in high-risk areas will perpetuate and create disproportionate adverse impacts on several protected classes of people, especially considering that its primary application is subsidized housing units. Several commenters noted that along with placing residents in danger, this will cause HUD and other public entities to spend limited resources on disaster recovery for all citizens, taking away from investments in affordable housing and programs to redress historical disparities. Several commenters cited FEMA risk data that 32 percent of federally assisted housing stock (1.5 million housing units) is at high risk of negative impact for natural hazards, compared to 24 percent of market rent homes and 14 percent of owner-occupied homes. These commenters noted that underestimates in FEMA's 1-percent-annual-chance flood hazard measurements mean that many more federally assisted homes are at risk, which supports the need for the new FFRMS standard to better assess risk. Another commenter presented evidence on how maladaptation measures—such as new infrastructure that cannot be improved without significant investment—entrench inequities.

One commenter explained that racial disparities in flood vulnerability are a direct result of local, State, and Federal exclusionary policies and practices, perpetuated by this rule. This commenter asked HUD to revise the 8-step decision making process to directly account for historical patterns and practices of affordable housing placement. This commenter caveated their response by adding that HUD must continue to provide funding to rehabilitate and improve the resilience of existing subsidized units in high-risk areas and honor residents' right to return to prevent post-disaster displacement.

This commenter also emphasized that households with low incomes are negatively impacted by flooding even if all mitigation and floodproofing measures are taken. The commenter explained that flooding damage takes a variety of forms such as the destruction of vehicles and personal property, toxins spread by floodwaters, and disruption of employment or childcare. As such, people with low incomes may experience significant negative impacts from flooding that are not related to damage to a housing unit. The commenter added that FEMA is shifting resources away from ''small disasters,'' reducing the resources available for replacing personal property, and that residents of homes built in FFRMS floodplains will continue to be significantly impacted even with the floodproofing and mitigation steps outlined in this proposed rule.

Several commenters asserted the alternative processing for existing nonconforming sites under § 55.21 will perpetuate or exacerbate inequalities. One commenter explained that exceptions are typically granted based on the condition under § 55.21(a)(1) that it's not ''practicable to transfer . . . under existing program rules, financial limitations, and site availability,'' by relying on historical discriminatory policies and practices that resulted in the disproportionately high rates of affordable housing in the high-risk locations. Providing two examples of HUD supporting development repair in unsafe areas, this commenter argued that HUD cannot excuse its obligation to redress discriminatory government policies and practices because those policies have, for example, increased property values in lower risk areas. Another commenter asserted that HUD failed to support the existing non-conforming sites with evidence that the floodway and adjacent areas will be safe over the next 20–40 years, also the relevant term of years for several listed forms of HUD assistance. This commenter referenced four HUD Inspector General reports finding problems with HUD's assessment of environmental and health risks. This commenter posed the following questions to HUD as important considerations in understanding the impacts of this provision on protected classes:

(1) Did HUD perform analysis on potential complete impacts related to floodways?

(2) How will the floodway analysis occur on an individual site basis?

(3) How is HUD projecting floodway expansion related to increased atmospheric water vapor over coming decades?

(4) How will HUD use climate science to project floodways' potential instability?

(5) How will HUD's site analysis consider climate-induced increase in pluvial flooding?

(6) How will HUD's site analysis consider potential sea level and associated groundwater rise?

(7) What is the universe of these floodway projects?

(8) What is HUD's estimate of how many HUD-assisted projects have buildings in floodways?

(9) How many similar projects has HUD found with floodway impacts?

(10) What racial equity and environmental justice considerations did HUD account for in drafting this provision?

(11) How will racial equity and environmental justice analysis apply to individual sites?

Another commenter asked HUD to address its decision to allow public housing residents to stay in or near a floodway in a rule acknowledging the dangerous and increasing impacts of climate change.

Another commenter added that stronger protections would lessen reliance on HUD to rebuild and replace community assets damaged by natural disasters, which currently divert funds away from programs targeting low-income families, aging populations, and persons with disabilities.

HUD Response: HUD appreciates the commenter's concern that many low-income communities and communities of color live in higher risk areas in and around floodplains. HUD believes that this rule supports a greater resilience within these communities to flooding and other related disasters, thus avoiding loss of services during disasters and any disparate adverse impacts. Resilient infrastructure helps to counteract entrenched inequalities by providing communities with resilient services through floods. HUD believes that a policy which bars development in the FFRMS floodplain would be too restrictive and have a significant negative impact on affordable housing availability. By allowing limited development and requiring flood risk mitigation equitably across the FFRMS floodplain through this rule, HUD believes substantial risk reduction can occur without substantial impact on housing affordability for all communities across the Nation who face flood risk. HUD agrees with commenters that the FFRMS standard is needed to better assess risk for Federal projects.

Separate from this rulemaking, a critical part of HUD's mission is to fully implement the Fair Housing Act, which not only prohibits discrimination but also directs HUD to ensure that the Department and its program participants proactively take meaningful actions to overcome patterns of segregation, promote fair housing choice, eliminate disparities in housing-related opportunities, and foster inclusive communities that are free from discrimination. In keeping with this mission, HUD also notes that under the new rule, § 55.20(b)(4) requires that any activity in a community with environmental justice concerns must coordinate its consultation and decision making from §§ 50.4(l) and 58.5(j). HUD disagrees that this rule perpetuates exclusionary policy that exacerbates racial disparities in vulnerable communities. HUD is working on fully implementing the goals of E.O. 14096 on revitalizing the nation's commitment to addressing environmental justice, which includes implementing practices that address or prevent exacerbating disparities in vulnerable or other affected local communities, along with other relevant E.O.s. In keeping with the goals of E.O. 14096, this rule will align other HUD programs with existing disaster recovery program requirements for elevation and will continue to allow projects to proceed in the floodplain so long as mitigation is incorporated into the project scope. HUD believes this alignment will help to increase the resiliency of vulnerable communities in high-risk areas.

HUD appreciates that no flood mitigation except for buyouts is entirely safe over time and that some households with low incomes can be negatively impacted despite the best mitigation efforts. The RIA considered the benefits of losses avoided from flooding. While HUD maintains no authority over FEMA's disaster assistance efforts, it is the objective of HUD for this rule to significantly improve resilience of newly built structures in the floodplain.

HUD appreciates the specific questions provided by commenters regarding implementation of the rule and will work to address these questions through future guidance. Regarding increases in atmospheric vapor and the expansion of the floodway, HUD relies on FEMA to determine and define the floodway as part of its FIRM process. HUD also intends to continue to rely on CISA data as it becomes more readily available. Over the next 20–40 years, HUD anticipates a significant development in flood resilience data, which will bolster the availability of CISA data nationwide. This in turn will result in better flood resilience outcomes. HUD notes that the rule's RIA contains equity and environmental justice analyses.

b. Concerns With the Public Notice and Community Engagement Requirements

Several commenters urged HUD to go beyond proposed public engagement and notice requirements in the proposed rule, mandating more accessible and transparent public notice to prospective buyers and renters in floodplains; community-led planning and decision making; and full accounting for long-term and indirect risks. These commenters reiterated that community engagement in planning and the floodplain hazard notice is a critical requirement that will allow for informed decisions but identified issues that they believe will perpetuate inequalities.

Several commenters stated the proposed 8-step decision making process and transparency requirements only account for short-term, direct damages of flooding and must be improved to account for long-term and indirect safety risks to those considering living in flood-prone areas. One commenter specified several indirect harms of flood events that have a disproportionate impact on marginalized communities not addressed by the proposed mitigation and floodproofing measures—toxins spread through floodwaters; disruption of employment, education, healthcare access; and infrastructure damage. More broadly, another commenter urged HUD to specifically account for the holistic cost of homeownership/rental value over the life of a home in assessing economic impact of requirements and disparate burdens throughout this rule, including the cost to live in, maintain, and insure a home over time, especially homes subject to recurrent natural disasters that may become uninhabitable. This commenter cited several sources finding that race, ethnicity, physical disability, and age are factors that significantly impact disaster vulnerabilities.

Another commenter urged HUD to amend §§ 55.20(f)(2)(iii) and 55.4 to ensure that environmental justice reviews require both public participation and a substantive analysis of the proposed action to ensure it does not overly burden existing communities. This commenter opposed exempting environmental justice outreach when data or mapping does not identify a particular community of concern. This commenter asserted that such flexibility: (1) incentivizes developers to save money by foregoing robust environmental justice review alongside communities historically underrepresented by land use decisions; and (2) shifts the burden onto community members. Specifically, this commenter urged HUD to delete the parenthetical ''if conducted'' from Step 6 under § 55.20(f)(2)(iii). This commenter stated that this proposed revision aligns with other HUD guidance, such as the environmental justice worksheet.

This commenter also asked HUD to amend § 55.4, § 50.23, § 58.43, or § 58.59 by adopting language access requirements from the voting rights context to ensure that immigrant and other non-English speaking communities have access to hazard notifications and can participate in community engagement. This commenter recommended that HUD model requirements after Section 203 of

the Voting Rights Act, stating that materials must be provided in alternative languages where, according to the U.S. census, citizens of voting age: are more than 10,000, or more than five percent of all voting age citizens, or on an Indian reservation, are more than five percent of all reservation residents; and the illiteracy rate of the group is higher than the national illiteracy rate. Additionally, this commenter urged HUD to amend § 55.20(b)(2) to allow at least a sixty (60) calendar day comment period, which this commenter stated will create no additional delay or economic harm, while providing necessary opportunity for public awareness.

Another commenter asked HUD to add notification requirements for actions involving repossession, receivership, foreclosures, and similar property acquisitions; and where issuance of rental subsidies is not associated with a project. This commenter reasoned that that HUD-associated foreclosed homes are often resold with scant information.

Another commenter urged HUD to strengthen the flood risk management and project design criteria in the following ways: (1) mandate proactive outreach to affected communities; (2) require both early resident and community leader engagement and engagement carried forward throughout project design and implementation; and (3) specify that communities' lived experiences—regarding community priorities, intended uses, flood susceptibility, and population specific concerns—are given equal weight as technical modeling in flood mitigation options assessments. This commenter reasoned that co-producing these assessments and planning processes will make residents more likely to support projects and help to address any obstacles, improve community understanding of flood risks and how they can individually prepare, and reinforce a sense of community.

Another commenter encouraged HUD to include additional flood insurance resources for those who may have difficulty understanding these insurance policies.

Another commenter urged HUD to amend §§ 55.20(f)(2)(iii) and 55.4 by incorporating other agencies' guidance (*e.g.,* the EPA Legal Tools to Advance Environmental Justice) and to define the substantive analysis necessary in an environmental justice review. For example, this commenter stated that environmental justice reviews must also require mitigation or an alternatives analysis if a project will have harmful impacts on the community. This commenter also stated that review must account not only for flood risk, but also for the intersecting and cumulative risks from all environmental hazards and disparate impacts, including discriminatory zoning, hazardous uses, disinvestment in infrastructure, and housing discrimination.

Several commenters stated that while allowing online posting improves accessibility in some ways, it still puts the onus on residents to identify projects that may affect them.

One commenter asked how HUD plans to remove barriers that low-income and protected stakeholders face that may make it more difficult for them to participate stakeholder meetings.

HUD Response: HUD appreciates the commenters' sentiment for greater accessibility and transparency for public notices to prospective buyers and renters in floodplains. HUD agrees that greater notification standards can allow for buyers and renters to better account for those risks when considering flood insurance. Additionally, HUD agrees that greater community engagement in planning and floodplain hazard notices is a critical component of the 8-step decision making process. HUD believes that the increased notification requirements for buyers and renters, along with more acceptable methods of public noticing for the 8-step decision making process found in the rule, will create the greater transparency and accessibility of vital floodplain information without creating undue regulatory burdens on already limited funding for projects.

HUD believes that Step 4 of the 8-step decision making process specifically requires responsible entities to look at direct and indirect impacts of building their project in the floodplain or wetland and that the requirements in the rule and the existing 8-step decision making process are not limited to the short-term impacts of living in flood-prone areas.

While HUD appreciates the comments on economic impacts associated with living in the floodplain, it would be inappropriate under the rule for HUD to address the holistic cost of home ownership in areas prone to natural disasters. There are innumerable potential influences of the holistic costs and indirect safety risks associated with homeownership/renting and it is impossible to account for all possible factors. HUD feels strongly that the RIA analyzes all relevant costs and benefits associated with this rulemaking. HUD appreciates the commenters' feedback that environmental justice reviews should be included more broadly, applying additional study and review is something the Department may consider in the future, contingent on the availability of resources. HUD also notes that consideration of environmental justice is a requirement for grantees under § 58.5(j), consistent with HUD's policy goals, including pursuant to E.O. 14096, as well as the consideration for environmental justice requirements under NEPA. HUD notes that responsible entities are required to complete an acceptable 8-step decision making process, that public input must be captured throughout that process, and that such process avoids placing the burden of compliance on community members.

HUD agrees that providing language from the Voting Rights Act or a 60-day public comment period could further public awareness. However, HUD believes that using requirements similar to Section 203 of the Voting Rights Act and quadrupling the required public comment period would cause significant economic harm to projects ready to complete environmental reviews and move towards construction. Additionally, while HUD would encourage grantees to utilize the tools of Federal partners in the completion of their environmental justice reviews, HUD has no plans to mandate the use of any particular tool for environmental justice analysis with this regulation as no one tool is suitable for every type of project HUD funds.

Under § 55.4 of the final rule, HUD-acquired properties sold after foreclosure would include the same notification requirements as those sold in other manners even where no rental subsidies were applied. HUD contends that the final rule will cut down on the properties sold where little information on flood hazard status was available so that homebuyers could make better informed decisions.

HUD notes that public participation in planning and implementation projects subject to review under NEPA is strongly encouraged. HUD believes that communities need to play a substantive role in the development of these plans and implementation of these actions because helps to ensure those communities are taking positive steps to be a part of their own solutions. That said, while HUD appreciates accounts of community members' lived experiences, flood modeling and mapping based on the standards described in this rule, like the FFRMS Federal agency tool in development by the White House Flood Resilience Interagency Working Group and the FFRMS Science Subgroup, with input from CEQ, OSTP, FEMA, NOAA, and HUD, is expected to be available at a consistent and nation-wide scale.

HUD appreciates the commenters' feedback regarding flood insurance resources for homeowners and notes that while this rule does not require flood insurance to be obtained beyond the FEMA-mapped 1-percent-annual-chance floodplain, it does encourage it. As has always been the case, grantees may extend additional requirements for flood insurance beyond the HUD minimum. Additionally, many HUD programs, like CDBG–DR, do allow for flood insurance to be subsidized for a period where it is a required mitigation post construction completion.

HUD appreciates the commenters' feedback that online posting improves accessibility for public noticing. HUD suggests that project sponsors work with their regional HUD representatives to help them achieve greater levels of accessibility and remove any other barriers their potentially affected project populations may face in their attempts at participation in the 8-step decision making process.

c. Program Standards

Several commenters pointed to disparate standards and requirements that they assert will exacerbate disproportionate adverse impacts on affordable housing residents and communities of color.

One commenter urged HUD to adopt the same higher floodplain management standards Department-wide, stating that not expanding higher standards across HUD programs may exacerbate inequalities.

Another commenter offered a direct and specific critique of the higher floodplain management standards FHA-insured market rate multifamily housing is subject to under the MAP Guide as compared to public housing. This commenter also urged HUD to increase resilience for manufactured housing residents (*e.g.,* facilitating public investments in adaptation projects, mandating stricter building codes, increasing access to disaster recovery funds, and incentivizing siting manufactured housing on safer areas).

HUD Response: HUD contends that this rule will have a beneficial impact on communities at greatest risk for flooding and that making those communities resilient in the face of climate change will help them continue to thrive in the future. Furthermore, HUD believes that the requirements in this rule will not have a disproportionate adverse impact on affordable housing residents and communities of color.

HUD appreciates the commenters' concerns regarding higher floodplain standards Department-wide beyond those programs covered by the Minimum Property Standards. The vast majority of other HUD programs are subject to floodplain management standards laid out in the revisions to part 55. While some HUD programs have historically implemented higher floodplain management standards, all HUD programs subject to part 55 will now be required to implement the same more protective FFRMS standard. Following implementation of the final part 55 and part 200 rules, HUD programs may issue program-specific guidance to implement these more protective requirements.

While HUD agrees with the commenter that FHA insured multifamily programs are currently subject to the standard from the MAP Guide and thus, a higher standard than public housing programs which are subject to part 55, HUD notes that the part 55 revisions align floodplain management standards across these programs—both FHA insured multifamily and public housing programs will be subject to the FFRMS floodplain management requirements.

HUD appreciates the commenter's feedback regarding increasing resilience for manufactured housing residents. It should be noted that under part 55, HUD has historically considered MHUs as site-built housing and therefore subject to the same part 55 requirements under various HUD programs. Part 55 does not apply to FHA's Single Family insured mortgage programs. In this final rule, HUD has made a small revision to clarify the Department's historical position that using HUD assistance for the new siting of MHUs has the same environmental requirements as building and substantially improving site-built housing under 24 CFR part 55.

d. Concerns About Disparate Impacts on Housing Supply

Several commenters raised concerns that restricting affordable housing development and rehabilitation in floodplains, along with a lack of elevation data available to establish the FFRMS, will disproportionately harm low-income and rural communities who are less likely to be able to afford relocation outside floodplains, unless HUD provides additional funding and waivers and increases the per-unit maximum limits. One commenter urged HUD to provide waivers for those most impacted by the rule's curtail of development. Another commenter stated that HUD should consider a practical alternative for developing in floodplains in these areas to avoid excluding rural communities in need of affordable housing.

HUD Response: HUD believes that to align with the goals of E.O. 13690 and E.O. 11988, Federal investment should not place vulnerable populations in risky flood-prone environments and promoting development in the floodplain will place harm on low-income populations. Federal investment in the construction of multifamily and/or public housing in riskier areas prone to flooding does not increase the availability of safe affordable housing units. It is HUD's goal to disincentivize continued Federal investment in high-risk flood-prone areas. HUD encourages grantees to seek practicable alternatives to development in floodplains through the 8-step decision making process.

3. Suggestions How HUD Can Further Incorporate Equity Considerations Into This Proposed Rule

Several commenters recommended that HUD prohibit use of fill dirt to achieve elevation requirements to avoid the damaging consequences of stormwater runoff on adjacent properties and communities, which are often lower-lying and most vulnerable. One commenter stated that where fill is necessary, HUD should require projects to retain the volume of water on site equivalent to the volume of fill used.

Several commenters asked HUD to provide additional and inclusive opportunities for communities historically disproportionately affected by flooding to provide feedback to the Department, during and beyond the public comment period.

One commenter asked that outreach include: clear communication of implementation timelines; broad and extensive training for public officials and stakeholders; and stakeholder partnerships across mitigation, housing, land use, floodplain management, and education sectors focused on engineering, architecture, and environmental science curricula nationwide. This commenter explained that education and clear implementation timelines are essential to prevent potential negative real-estate market impacts, especially in communities that already experience disproportionate adverse impacts of flooding. Another commenter asked HUD to provide additional detail and public engagement on how HUD will consider environmental justice impacts of Department actions.

Several commenters urged HUD to provide additional financial and robust technical assistance targeted to communities of color and low-income communities to help offset costs and break down barriers to implementing the rule. One commenter encouraged

HUD to provide (or require housing authorities to provide) renters insurance, property recovery assistance, and temporary housing, prioritizing Black, Hispanic, Indigenous, and low-income communities that experience disproportionate impacts of climate change and inequitable access to the resources to rebuild after disasters. This commenter reasoned that because renter's insurance is often more expensive in low-income communities and communities of color and HUD programs do not require insurance, these communities often experience property loss that resonates for generations, whereas higher-income people are more likely to be made whole. Further, this commenter explained that critical disaster recovery resources are often denied to, or delayed in reaching, marginalized communities.

Another commenter urged HUD to commit substantial funding and staff to the following actions to ensure equity goals are met: communicating flood risks, potential loss, and environmental justice implications across its portfolio and monitoring and enforcing implementation and compliance.

One commenter described the requirement to coordinate the 8-step decision making process with public engagement associated with environmental justice as a good first step in working towards considering environmental justice impacts, which must be paired with greater affordable housing development outside of the floodplain. This commenter encouraged HUD to proactively provide buyout funding with relocation assistance for repetitive loss properties.

HUD Response: HUD does not mandate how a structure may be elevated and leaves that authority to local jurisdictions who have a better understanding of the necessary engineering needed for foundations in their area. This is also true with regard to the needs of the community when it comes to water runoff from properties.

HUD will continue to work with our local partners and stakeholders to ensure the best possible technical assistance and support can be provided which helps our partners achieve efficient, compliant, and effective floodplain management. HUD intends to provide specific technical assistance to responsible entities to ensure a smooth transition to any new requirements. HUD agrees that clearly communicated requirements and implementation timelines are a necessary part of any successful regulatory update.

HUD notes that the rule does maintain but does not expand previously instituted flood insurance requirements for HUD projects within the 1-percent-annual-chance floodplain. HUD strongly encourages flood insurance for projects located in the FFRMS floodplain to minimize financial losses, but it is not mandated. HUD or the responsible entity may also require flood insurance beyond the minimums established by the FDPA when necessary to minimize financial risk. Renter's insurance does not generally cover floods and is not considered a requirement under the rule.

HUD appreciates the commenters' sentiment that additional funding should be made available to HUD to ensure flood risks are adequately addressed throughout its portfolio. Should funds be congressionally appropriated for flood resilience, HUD would enthusiastically utilize them.

Definitions

A. General Comments on Definitions

Some commenters requested that HUD ''put all definitions at the top of 24 CFR part 55.''

HUD Response: HUD intends to maintain the format and structure of part 55. As such, the definitions section will be maintained in its current location at § 55.2 and not relocated to § 55.1.

B. ''Critical Action'' Definition at Proposed 24 CFR 55.2(b)(3)

One commenter found the definition of ''critical action'' in § 55.2 to be vague. The commenter said this vagueness would make it challenging to align with the standards set forth in this proposed rule and recommended revising the definition, both to make it clearer as to what facilities would be included and to expand its reach.

Several commenters supported the inclusion of ''community stormwater management infrastructure'' and water treatment plants under the ''critical action'' definition. Other commenters requested that HUD define ''community stormwater management infrastructure.'' Commenters said that if the definition includes any stormwater development associated with multifamily construction, including offsite, the definition could be applied to any site at or below the 0.2-percent-annual-chance floodplain elevation, based on the definitions for FFRMS included in the proposed language.

HUD Response: HUD's definition for ''critical action'' comes from E.O. 11988 and guidance issued by the Federal Interagency Floodplain Management Task Force and is considered the same definition for these actions by Federal agencies and departments. As such, HUD has determined that the definition is sufficient to provide guidance and flexibility as needed for practitioners to implement the rule as it stands and disagrees that a definitive list is necessary or advisable.

HUD disagrees that the definition of ''community stormwater management'' could be applied to any stormwater development associated with multifamily construction. As discussed in the proposed rule, the revised definition of critical actions specifically references water treatment plants as examples of a utility or service that would be considered as critical actions. This makes evident that the change is intended to focus on larger infrastructure level projects and not smaller upgrades to most individual structures.

C. ''FFRMS Floodplain'' Definition at Proposed 24 CFR 55.2(b)(4)

One commenter suggested including a very clear definition of what is meant by the ''horizontal floodplain'' for each approach where it applies. The commenter went on to suggest that New York State's guidance document for the Community Risk and Resiliency Act could provide model language.

Another commenter expressed concern that HUD is proposing to use a different definition of ''floodplain'' than is used by FEMA to establish FIRMs. The commenter urged HUD to consider applying terminology and standards consistent with FEMA's. Another commenter asked HUD to clarify if the definition of floodplain applies to a FEMA-recognized 1-percent-annual-chance floodplain or the HUD-recognized FFRMS floodplain. This commenter said that assuming the latter, this represents additional administrative burden and can result in reduced property values compared to similarly located multifamily properties.

HUD Response: HUD appreciates the commenters' suggestion to use the New York State guidance on Community Risk and Resiliency Act as a model for the horizontal floodplain definition. Additionally, HUD understands that some people may have a hard time visualizing what the horizontal extent of a floodplain is without maps created by FEMA. As such, HUD intends to create implementation guidance that includes supportive materials and references to existing tools, such as the FFRMS Floodplain Determination Job Aid,[40] to help individuals identify and visualize

[40] *See https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf.*

the horizontal extent of the FFRMS floodplain.

Under Executive Orders 13690 and 14030, HUD, like all Federal agencies, is directed to update its floodplain regulations to be consistent with the FFRMS. Though all agencies are required to comply, not all are able to comply at the same pace. HUD continues to work closely with our interagency partners to ensure that our rules are as aligned as possible and that tools developed by NOAA and FEMA are compatible with our regulatory framework. HUD and FEMA continue to work closely together in these efforts to ensure consistency of guidance. In addition, FEMA has already begun implementation of the FFRMS, in part, through policy and guidance, thereby this regulatory revision will better align with FEMA's current approach to FFRMS requirements.

D. ''Impervious Surface Area'' Definition at 24 CFR 55.2(b)(9)

One commenter stated that runoff coefficients vary greatly among surfaces, including lawn and other surfaces not generally associated with ''impervious surface.'' The commenter recommended that when calculating the effects of projects on receiving waters, metrics be utilized to assess the pre- and post-project runoff calculations to determine appropriate mitigative efforts to minimize impacts to receiving waters and downstream communities.

Another commenter noted that it can be difficult to define whether an entire area is an ''impervious surface'' because some parts of the area fit the definition and some do not. The commenter asked how such a situation would affect the management of an area.

HUD Response: HUD appreciates the commenters' feedback regarding runoff coefficients. HUD policy recommends that project sponsors utilize experts to help them implement effective mitigation activities for all projects with potential to impact wetland and floodplain resources. Professional engineers utilizing best available data and current best practices are recommended where appropriate. These experts can also help determine how permeable various materials are and where they can best be used to mitigate a layered landscape. Additionally, HUD requires the 8-step decision making process to outline necessary mitigations to avoid impacts and to examine practicable alternatives to the project. Because the 8-step decision making process also outlines a public engagement requirement, the public can weigh in on a proposed project to comment on the impervious surface area and its impacts.

E. ''Wetlands'' Definition at Proposed 24 CFR 55.2(b)(13)

Many commenters wrote to support expanding the definition of wetlands. One commenter said that with the expanded definition, HUD can more safely and sustainably carry out its mission in a more streamlined manner. Another commenter reasoned that the expanded definition would provide benefits for soil retention by avoiding flooding. This commenter went on to say that there is greater specificity in how soils may determine which areas are wetlands but that the new definition is a good starting point.

Another commenter stated that the definition of ''wetlands'' in the proposed rule is very similar to the definition in the 1987 Army Corps of Engineers manual, which is employed by the Clean Water Act (CWA) Section 404 regulatory program and Natural Resources Conservation Service. However, the commenter says that such definition does not capture all areas performing wetland functions that benefit storm flow augmentation and enhance resiliency.

The commenter argued that the part of the proposed definition that states ''This definition includes those wetland areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid fill roadbeds and activities such as mineral extraction and navigation improvements,'' is unnecessary since the wetland definition is based on ''in-situ'' information rather than geographic location or genesis. The commenter said it is also not clear why the rule states that ''This definition includes both wetlands subject to and those not subject to Section 404 of the Clean Water Act as well as constructed wetlands.''

This commenter suggested that the linkage of wetlands defined under this proposed rule and Section 404 of the CWA, or the Food Securities Act, be removed and that a functional analysis methodology be employed for aquatic resources proposed to be impacted by HUD actions. The commenter said this method would better protect communities and natural infrastructure from the effects of climate change and better preserve those resources functioning to the benefit of the watershed. This commenter further explained that while there are resource areas which may ''overlap'' with other Federal, State, and Tribal regulatory programs, it is worth noting that the intent should be the broad protections of floodplains and their function to ameliorate the effects of climate induced flooding and not merely to replicate Federal program standards.

Several commenters expressed support for a uniform definition of ''wetlands'' across Federal agencies to avoid inconsistent and unpredictable wetland delineations and ultimately unequal application of mitigation measures. Several commenters said wetlands would likely be better protected if the definition of wetlands among Federal agencies could be consistent. Several commenters stated that human error based on misunderstanding of what a wetland is likely results in compliance issues related to unauthorized filling of wetlands.

One commenter argued that HUD should follow the U.S. Army Corps of Engineers and EPA definition of ''wetlands.''

Other commenters wrote that HUD should use the consistent definition of a wetland as defined by the NWI.

Several commenters recommended a clarifying change to the definition of ''wetlands.'' The commenters stated that the definition does not differentiate between ephemeral, intermittent, or perennial streams. They asked HUD to please include the definition of deep-water aquatic habitat in the final rule as it would be helpful to avoid confusion as to whether these mentioned aquatic resources qualify as wetland.

HUD Response: While HUD appreciates the commenters' feedback regarding a broader definition of wetland, it should be noted that the rule does not change HUD's definition of a wetland, it merely clarifies its existing policies that describe wetlands as being more than what is identified on an NWI map. HUD generally agrees that soil profiles can be helpful in determining if a wetland may be present on a site; however, HUD, like many Federal agencies, bases its definition of a wetland on the definition found in Executive Order 11990. As such, many agencies have similar definitions. HUD believes that its definition is sufficient to capture the sensitive areas which are protected under its rules.

While HUD agrees that a functional analysis model could be useful in limited circumstances, the benefits are outweighed by the general complexity of the approach. HUD does not want the rule to be burdensome to its grantees in a way that could limit funding towards necessary programs.

HUD disagrees that all Federal agencies should utilize the same definition for wetlands and that HUD's

definition should be dependent solely on the NWI. Not all Federal agencies fund projects with the same level of potential impact and HUD projects are rarely subject to the permitting requirements of the Clean Water Act. HUD feels that its definition of wetlands is therefore more appropriate for the types of impacts associated with HUD projects.

HUD amended its definition of wetlands to remove reference to things that do not constitute wetlands. This change was made both because it is not necessary to list things that the definition does not cover and avoid confusion about certain areas around deep water aquatic habitats that may be considered wetlands.

HUD intends to release subregulatory implementation guidance to ensure responsible entities utilize compliant processes in their environmental reviews.

F. Recommended Additional Definitions

1. Incidental Floodplain

Several commenters requested that HUD provide a clear definition of the incidental floodplain for public comment. One commenter said this proposed rule would maintain a narrower version of the existing incidental floodplain exception as applied to the FFRMS floodplain (not including floodways, coastal high hazard areas, or within the LiMWA) in proposed § 55.12(g). This commenter said this section would allow projects to proceed without completing the 8-step decision making process where an incidental portion of the project site includes the FFRMS floodplain.

HUD Response: HUD has provided subregulatory guidance and resources on the HUD exchange website to illustrate requirements for approval of a project site, an incidental portion of which is situated in a floodplain. HUD agrees that the rule would maintain a narrower version of the existing incidental floodplain (not including floodways, coastal high hazard areas, or within the LiMWA) and allow those projects that fit under the more limited exception to proceed without completing the 8-step decision making process as stated in Section G of the proposed rule. HUD has also removed § 55.12(g)(3) to avoid duplication and to better align with both existing processes and with the new incidental floodway provisions at § 55.8.

2. De Minimis Improvements

Several commenters requested that HUD define ''de minimis improvements'' in detail.

HUD Response: HUD notes that de minimis improvements, as the name implies, are improvements too trivial or minor to merit consideration. De minimis improvements referenced in § 55.8(a)(1)(ii)(B) include activities that have minimal ground disturbance or placement of impervious surface area to ensure accessibility where permitted by local ordinances and where it does not increase flood risk to the property. HUD intends to provide guidance and technical assistance to help project sponsors ensure any improvements in a floodway are de minimis and utilize the best available engineering practices.

Compliance—New § 55.6 Providing a Process To Complying With This Part, and New §§ 55.8 and 55.10 on Limitations on HUD Assistance in Floodplains and Wetlands

A. New § 55.6, Complying With Floodplain Management and Protections of Wetlands Regulations

One commenter described the new § 55.6 as a useful process for practitioners. This commenter asked HUD to strengthen compliance in the following ways: (1) emphasize floodplain avoidance; (2) require reporting on quality of functional floodplain and wetlands impacted by a floodplain action; and (3) develop methods for tracking cumulative loss of functional floodplains and wetlands.

Several commenters asked HUD to provide the ''Roadmap to complying with this part'' for public comment once available.

Several commenters urged HUD to ensure State, local, Tribal, and regional entities have the tools they need to comply with this proposed rule.

HUD Response: HUD appreciates commenters' feedback on the new § 55.6 on complying with floodplain management and protection of wetlands regulations. HUD agrees that compliance can be strengthened via floodplain avoidance, reporting on impacts to floodplains and wetlands, and tracking cumulative losses. HUD believes that the 8-step decision making process at § 55.20 implements many of these recommendations and HUD will continue to emphasize these best practices via existing and forthcoming subregulatory guidance. HUD notes that the ''roadmap to complying with this part'' is the new § 55.6 language itself that was published for public comment. HUD will continue to support local government and Tribal entities and commits to providing additional guidance and resources to aid in regulatory compliance.

B. New §§ 55.8 and 55.10, Limits to HUD Assistance in Floodplains and Wetlands

Several commenters expressed support for proposed § 55.8(c) requiring that HUD or the responsible identity address severe repetitive loss (SRL) properties.

One commenter urged HUD to pay close attention to rehabilitation of multifamily units where residents have needed evacuation and rescue by emergency personnel (in addition to those who have lost property and/or experienced displacement). This commenter recommended that HUD prioritize protections that break the cycle of loss faced by residents, particularly in communities where SRL properties comprise a significant portion of affordable housing stock. This commenter also noted that FEMA determined that repetitive loss is ''the single most important factor that affects stability of the National Flood Insurance Fund.''

Another commenter stated the threshold for a property being designated as SRL is relatively low and therefore suggested that under proposed requirements at § 55.8(c), HUD or the responsible entity should be required to provide this information to the third party conducting the 5- or 8-step review.

Another commenter encouraged HUD to proactively designate funding for buyers with relocation assistance for SRL properties that will otherwise be subject to increasingly frequent and intense damage due to climate change.

Another commenter stated that properties experiencing repetitive loss should be rebuilt to modern standards that mitigate flood risk.

HUD Response: HUD agrees with commenters that § 55.8(c) is an important provision to protect lives and property and maintain stability of the National Flood Insurance Fund. The intent of this provision is to better protect those living in communities where a significant portion of the affordable housing stock is comprised of SRL properties, particularly those who may have previously experienced displacement. HUD agrees that SRL mitigation requirements should be included in the 5- or 8-step decision making process and notes that §§ 55.8(c) and 55.20(e) of the final rule require disclosure and implementation of FEMA identified SRL mitigation in Step 5 of the process. The mitigation measures identified in Step 5 may be identified by HUD, the responsible entity, or a third-party environmental review preparer.

HUD does not have congressionally appropriated funds specifically for SRL properties, but relocation or other mitigation activities at SRL properties may be eligible under multiple HUD grant programs that fund relocation and other mitigation assistance.

C. HUD Compliance Monitoring

Several commenters asked how HUD will monitor, enforce, and address violations of the proposed rule.

One commenter posed the following specific questions about HUD's current and proposed monitoring practices: (1) What types, and to what extent, do offices outside of HUD's Office of Environment and Energy perform monitoring to ensure assisted properties and proposed sites do not occupy floodways in violation of part 55? (2) How does HUD monitor housing authorities outside of Community Planning and Development (CPD) entitlement communities for environmental compliance? (3) Outside those performed by HUD's Office of Environment and Energy, how does HUD monitor flood insurance for programs administered by FHA Multifamily, the Office of Disaster Recovery, and the Office of Public and Indian Housing? (4) What steps did HUD take following the 2015 HUD Inspector General report, ''Buildings at Three Public Housing Authorities Did Not Have Flood Insurance Before Hurricane Sandy'' to ensure compliance with mandatory flood insurance maintenance under the Flood Disaster Protection Act of 1973? (5) How will HUD exercise its oversight responsibility over properties approved under the proposed § 55.21 to ensure residents are not subject to flooding or repeated floods, or to monitor changes in the mapped floodways, especially increased flood risk over time? (6) Does HUD have staff with the qualifications to review hydrological, hydraulic, and hydrostatic threats to structures from floodways?

Another commenter explained that strong code enforcement—including adequate staffing numbers/expertise and continuing education on code updates and best practices—is necessary to realize public safety and resilience goals, citing evidence that strong code enforcement can contribute to loss reduction by 15–25 percent.

Another commenter urged HUD to commit the following to ensuring compliance with the FFRMS and protections: funds, additional staff, and a comprehensive implementation plan that strategizes data collation on flood risk communications and environmental justice.

HUD Response: HUD will address enforcement and compliance with the rule via environmental monitoring identified at § 58.77(d). HUD's Office of Environment and Energy conducts in-depth environmental monitoring and exercises quality control (via training and technical assistance) for the environmental review activities, including part 55 requirements, performed by responsible entities. Program offices, including FHA Multifamily, Office of Disaster Recovery, and Public and Indian Housing are also responsible for limited environmental monitoring to review compliance. This includes monitoring for compliance with Federal flood insurance requirements for projects involving mortgage insurance, refinance, acquisition, repairs, rehabilitation, or new construction.

HUD has floodplain and wetlands subject matter experts who will review and make recommendations for exemptions requested under the § 55.21 provision. HUD may rely on project engineers, Federal science agencies (*e.g.,* FEMA, U.S. Army Corps of Engineers), and other experts as needed, depending on the nature of the flood risk and the project proposed. To provide further clarity, HUD has outlined the specific minimum requirements to utilize the alternative process from § 55.21 which includes removing all residential units from the floodway, elevating or floodproofing all buildings in the FFRMS floodplain where practicable, and receiving a No Rise Certification for any new improvements in the floodway.

HUD agrees that code enforcement is an important piece of meeting public safety and resilience goals and works with its local partners to ensure HUD programs are compliant with local requirements. HUD also agrees that increased capacity to implement FFRMS via funding, staffing capacity, and data collection is critical and will continue to emphasize this need through proper appropriation and hiring channels. HUD is addressing the 2015 HUD OIG report referenced by the commenter outside of this rulemaking.

Notification of Floodplain Hazard Requirements Under 24 CFR 55.4

A. Support for Notification Requirement

Several commenters expressed support for the proposed changes to notification of floodplain hazard requirements as a critical requirement to ensure buyers, developers, renters, and other stakeholders are fully informed of a site's flood risk and potential direct and indirect costs. One commenter explained that increased transparency of flood risk and benefits of flood insurance creates stronger consumer protection. Another commenter described the notification requirements as morally right.

One commenter stated that the notice of floodplain hazard requirements remedies deficiencies and inconsistencies in State protections, explaining that 21 States have no requirements to disclose to prospective homebuyers past incidents of flooding, flood risk, or flood insurance information, and only 8 States require prospective tenants receive any of these disclosures.

Another commenter explained that these requirements are particularly necessary for publicly subsidized housing, which prospective renters and buyers may assume is safe by virtue of being built by a public agency or housing authority and in accordance with Federal requirements, despite most affordable housing being located in vulnerable areas.

Another commenter stated that HUD's inclusion of detailed notice contents requirements and lease acknowledgements will support consistent implementation of this protection.

Another commenter expressed support for the new proposed § 55.6, which outlines the required process that HUD or another responsible entity must follow in carrying out notification requirements. This commenter urged HUD to commit necessary resources to effectively fulfill notification of floodplain risk obligations across its portfolio.

Another commenter encouraged HUD to require notification as early in the process as possible and in a method and language appropriate to potentially impacted communities.

HUD Response: HUD appreciates the commenters' support for the proposed changes to the notification requirements which ensure buyers, developers, renters, and other stakeholders can make informed decisions about a property's flood risk. HUD agrees that increased transparency creates stronger consumer protection for residents of publicly subsidized housing. HUD notes that the final rule adds the term ''HUD-acquired'' to the list of property types in § 55.4(b) to clarify that properties that had previously been insured by HUD and were then acquired by HUD through default are also subject to the requirements for notification to renters when a property is in a floodplain.

B. Recommendations To Strengthen Notification Requirements

Several commenters asked HUD to strengthen the rule to require that notifications are written in accessible, plain language that is tailored to impacted communities. One commenter asked HUD to amend §§ 55.4, 50.23, 58.43 or 58.59 by adding language access requirements mirroring Section 203 of the Voting Rights Act to ensure that immigrant and other non-English speaking communities have access to hazard notifications and can participate in community engagement. Another commenter stated that notice should be given in as many forms/methods as necessary to reach the community, which may include methods beyond government websites or newspapers of general circulation. Several other commenters encouraged HUD to specifically encourage publication in resources that are free to the public.

One commenter recommended that notification include flood disaster mitigation plans. Another commenter recommended adding emergency preparedness information to the required notification contents on emergency procedures under proposed § 55.4(b).

Several commenters encouraged HUD to work with FEMA to provide useful information to buyers and renters about the value of flood insurance and resources to help people understand how flood insurance policies work.

Another commenter urged HUD to revise the list of exceptions in § 55.12 to include notification of floodplain hazard requirements for property transactions involving repossession, receivership, foreclosure, etc.; as well as HCVs and rental subsidies not associated with a project. This commenter reasoned that HUD-associated foreclosed homes are often resold with scant information.

Another commenter asked HUD to revise the rule to apply the notification requirements beyond floodplain boundaries. This commenter explained that this suggestion is based on this commenter's experience during a tropical storm and projected expansion of flood risk due to climate change.

Another commenter suggested expanding the effort to make sure prospective buyers and renters have adequate information about flood risk and insurance, beyond those living in the floodplain.

HUD Response: HUD intends to provide grantees, applicants, and responsible entities with technical assistance and guidance which will help ensure that notifications are effective and compliant. HUD encourages any property owner to work with their tenants and ensure notices are communicated effectively.

HUD guidance and trainings instruct grantees to translate environmental review public notice documents for relevant limited English proficiency (LEP) populations to meet Title VI requirements for LEP.

HUD notes that while it encourages property owners to share all pertinent information surrounding flood risk for their properties, many communities do not have formal mitigation plans in place. That said, the rule does require evacuation information to be included along with ingress and egress routes.

HUD does not intend to expand the list of exceptions at § 55.12 currently and notes that certain property dispositions are subject to analysis under part 55. While HUD encourages notification of flood risk, HUD does not intend to require that notification for properties outside of the floodplain. HUD encourages grantees to work with Federal partners and disseminate relevant information regarding flood insurance to those in the floodplain.

HUD appreciates the commenters' feedback regarding the expanded notification requirements for renters within the floodplain. HUD believes the notice requirements will help without overly increasing the administrative burden on landlords.

C. Opposition to Notification Requirement

Several commenters objected to expanded floodplain hazard notification requirements, stating that the resulting administrative burden on property owners and management agents could result in reduced occupancy at covered properties compared to similarly located housing.

One commenter added that since regional HUD offices can also require flood insurance, including for properties not within the 1-percent-annual-chance floodplain per HUD's MAP Guide, the fact that flood insurance is available or required does not necessarily indicate a property is within a floodplain. Another commenter urged HUD to strike ''and flood insurance is available for their personal property'' from renter notification requirements at § 55.4(b) and ''the availability of flood insurance on the contents of their dwelling unit or business'' from conveyance restrictions for disposition of real property in § 55.4(c)(2)(i)(B), reasoning that housing providers are not positioned to make definitive statements about flood insurance availability to renters.

HUD Response: HUD strongly disagrees with the commenters' statements that notification of flood hazards to residents is a significant administrative burden on property owners and management agents. A single disclosure necessary to provide tenants the opportunity to make informed decisions about their flood risk is not a significant administrative burden especially in context of other information property owners/management are expected to gather when leasing.

HUD disagrees also that property owners are not positioned to make statements about flood insurance availability for structures that they own. HUD encourages responsible entities and project partners to implement flood insurance requirements beyond the minimums established by the Flood Disaster Protection Act where they feel it is appropriate to minimize financial risk, but going beyond the minimum standard is not required.

D. Requests for Clarification of Hazard Notice Requirement Regulations

One commenter asked if ''floodplain'' covered by hazard notification requirements under the new § 55.4 means FEMA-recognized 1-percent-annual-chance floodplains or HUD-recognized FFRMS floodplains. This commenter stated that if the notification of floodplain hazard applies to FFRMS floodplains, the additional administrative burden caused by this expanded application can result in reduced property values compared to similarly located multifamily properties.

Several commenters asked HUD to provide a standard tenant notification form that meets the hazard notification requirements.

Additionally, several commenters asked HUD to revise the rule to clarify aspects of the notification requirements, which they stated was necessary to carry out the requirements. Several commenters asked HUD to more clearly define the conveyance restrictions moved from current 24 CFR 55.22 to the new 24 CFR 55.4. Several commenters asked for clearer details on the process, including: (1) the method for providing the notification to prospective homebuyers/renters; (2) whether the notification is signed; and (3) who prepares the notification.

One commenter stated that additional guidance or specificity to required notification content is needed to provide any of the information listed (*e.g.,* proximity to flood-related infrastructure, ingress and egress, flood insurance claims disclosure). Several commenters specifically asked HUD to

define what proximity must be included and what information is required regarding ''proximity of a site to the flood-related infrastructure.'' One commenter explained that property owners may not know reliable sources for this information.

One commenter asked HUD what type of notice residents would receive that a floodway is proximate to the site, the risk it poses, and how to relocate during a flooding event.

HUD Response: In the language of the new § 55.4, HUD states that the notification requirements extend to the FFRMS floodplain. HUD contends that if a property were reduced in value due to flood risk, that risk would exist outside of any notification requirement HUD imposes.

HUD intends to release additional guidance and technical assistance to assist grantees to better understand and utilize the conveyance restrictions outlined in § 55.4. HUD intends to provide technical assistance and guidance for compliance with the hazard notification requirements which may include some form templates that grantees can use and what information regarding proximity to the floodplain should be included. Use of these forms will not be mandated in keeping with other public notice documents HUD provides for part 55. HUD contends that any administrative effort necessary to inform renters of their flood risk is not only minimal but necessary for the health and safety of residents. Given the existing requirements necessary in a rental agreement, HUD believes the additional costs of this notification to be de minimis.

HUD intends to provide guidance and technical assistance to grantees, applicants, and responsible entities to help ensure consistent and compliant notice is provided to tenants when their buildings are in the floodplain of concern.

Consolidation and Clarification of Flood Insurance Requirements Under New 24 CFR 55.5

A. Support for Flood Insurance Requirements

Several commenters expressed their support for the new flood insurance provisions in the proposed rule. One commenter suggested the changes will increase transparency and communication of flood risk and the benefits of flood insurance.

Another commenter supported HUD requiring flood insurance beyond the minimum requirements established in the FDPA and said it was prudent and necessarily minimized financial risk. This commenter said that the existing FDPA is insufficient due to inadequate policy limits in an era of rapidly rising home valuations, the fact that the need for flood insurance in flood-prone areas that may be located just ''outside'' of a designated Special Flood Hazard Area (''SFHA''), and the fact that FEMA has only mapped 1/3 of the Nation's floodplains.

Another commenter said that the flood insurance provisions in the proposed rule are an important step to ensuring the sustainability of America's housing stock. Incorporating concepts such as CISA, additional freeboard protection, open space foundation systems and the limitation of the use of fill within SFHAs are higher standards proven to reduce risk.

Another commenter agreed that HUD must ''prudently'' manage its FHA-insured mortgages by first understanding the portfolio's actual exposure to flood risk and the extent to which FHA homeowners must purchase flood insurance policies. The commenter said flood risk management policies at all levels of government are critical to reducing national flood losses.

Another commenter said that all consumers should be encouraged to obtain flood insurance, especially given the increasing flood risk due to climate change.

One commenter suggested that HUD expand the requirement for flood insurance for all assisted properties that have previously flooded, especially CDBG–DR projects.

HUD Response: HUD appreciates the commenters' feedback regarding their support for the flood insurance provision and the increase in transparency and communication for flood risk. While the Department also appreciates the sentiment behind wanting to expand the flood insurance requirements outside of the special flood hazard area, HUD intends to strongly encourage flood insurance outside of those areas rather than mandate it. HUD does not have the authority to change or alter the NFIP regulations as those regulations are implemented by FEMA.

HUD appreciates the commenters' sentiment regarding the need to improve flood risk management policies at all levels of government. The Federal government can help set a national regulatory floor for things like elevation and insurance standards, but local and State governments are encouraged to evaluate their own regions and develop code requirements that suit their needs if they go beyond the minimum set at the Federal level. This rule, which applies to the CDBG–DR program, explicitly encourages flood insurance for all properties within the FFRMS floodplain and beyond the 1-percent-annual-chance floodplain mapped by FEMA. Additionally, the rule clarifies that HUD, or the responsible entity, may require flood insurance coverage beyond the minimums to minimize financial risk.

B. Flexibilities and Exemptions to Requirements Sought

One commenter urged HUD to allow flexibility for Public Housing Authorities to use different methods of transferring or retaining risk in proposed § 55.5(b). This commenter said that requiring flood insurance up to replacement value for such entities may impact the market for flood insurance nationwide.

Another commenter asked that any floodplain requirements be limited only to ''Federally funded projects.'' This commenter said that since HUD does not originate loans or fund projects through the FHA Multifamily Program, but rather, it insures those loans through the FHA, projects insured by these programs should not be required to meet the mandates of the FFRMS.

HUD Response: HUD appreciates commenter concerns regarding the market for flood insurance nationwide. HUD has a responsibility to ensure that publicly funded investments in public housing authorities in higher risk areas like floodplains are protected against loss through insurance. Through Executive Order 11988, HUD is directed to protect Federal investments including those providing insurance of mortgages. Additionally, insurance markets are not generally limited by supply and more policy holders tend to drive down actuarial risk-based rates. HUD and FEMA both offer homeowners several resources to help them differentiate between types and obtain appropriate levels of flood insurance for their structures.

For FHA multifamily mortgage insurance, the project is submitted to HUD as an application for approval prior to construction or rehabilitation. Therefore, the project is subject to NEPA and part 55. In contrast, newly constructed single family homes have already been constructed when an application for mortgage insurance is submitted to HUD. Therefore, newly constructed FHA insured single family properties are only subject to the Minimum Property Standards—NEPA and part 55 do not apply.

C. Opposition to Flood Insurance Requirements

Several commenters opposed the proposed rule's changes to flood insurance requirements and language in the proposed rule stating that HUD ''strongly encourages'' flood insurance for all structures within the FFRMS floodplain. These commenters argued that maintaining flood insurance for all structures within the FFRMS floodplain will make it prohibitively expensive to build and operate necessary housing, and the costs will be passed along to residents in the form of higher rents and higher housing costs. Several of these commenters went on to say that though purchasing flood insurance beyond what is required may mitigate future financial losses, it may require some consumers to suffer current financial losses in the form of higher operating expenses. One commenter emphasized that they agree that flood insurance is an essential tool to manage potential future costs but that it can also make homes in risky areas less affordable.

HUD Response: HUD believes that flood insurance is an important component of flood resilience. While HUD does not require flood insurance when a structure is located outside the 1-percent-annual-chance floodplain, the Department supports and strongly encourages owners to obtain it as HUD knows that structures within the FFRMS floodplain are still at greater risk of flooding than those outside the floodplain. The Department recognized and acknowledged in the RIA that the rule has the potential to increase construction costs for housing. After weighing the increased cost against the potential savings associated with the benefit of more resilient housing stock, HUD determined it to be cost effective to move forward with the rule, including flood insurance requirements. HUD notes that the flood insurance requirements referenced in this rule are mandated by statute under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a)); the regulatory language in § 55.5(a) applicable to financial assistance within the special flood hazard area restates the flood insurance requirements that are already required by statute outside of this rule. HUD does recognize though that while flood insurance can be a financial burden it is only required within the 1-percent-annual-chance floodplain. The rule does not require flood insurance for all structures within the FFRMS floodplain but instead strongly recommends it.

D. FEMA Floodplain

Several commenters urged HUD not to expand its requirements beyond FEMA mapping, asking HUD to limit flood insurance requirements to only structures located in the SFHA per FEMA maps. These commenters said that utilizing CISA maps would create a disjointed approach to flood insurance.

Another commenter urged HUD to work with and support FEMA in its recommendations to reform the NFIP.

One commenter suggested HUD rephrase the statement ''. . . the NFIP plays an important role in minimization measures to reduce flood losses,'' reasoning that flood insurance does not minimize losses but enables the insured to recoup some of the material losses.

HUD Response: HUD appreciates the feedback from commenters concerned with flood insurance outside of the SFHA and FEMA-mapped 1-percent-annual-chance floodplain. As stated in response to opposition to requirements, the rule does not extend flood insurance requirements to the FFRMS floodplain outside of the FEMA mapped 1-percent-annual-chance floodplain. The rule only strongly recommends flood insurance in those areas. This is in keeping with FEMA's requirements under NFIP regulations. HUD will continue to work with its Federal partners and support their efforts to increase the Nation's resilience to disaster through various programs, including NFIP.

HUD appreciates the comment but believes that the recoupment of flood damages may be considered a reduction of flood losses.

E. Limitations for Multifamily Housing

One commenter supported increasing coverage limits but asked that HUD recognize the limitations on coverage in more expensive areas, particularly for multifamily buildings. This commenter explained that while some large residential buildings may be able to purchase private excess coverage, options in most areas are limited and often cost-prohibitive for affordable housing providers. This commenter also said that NFIP coverage limits are insufficient to cover the costs of flood damage in multifamily homes, as well as in mixed-use buildings, and urged HUD to support efforts to increase coverage for such buildings. This commenter added that private insurers can refuse coverage to at-risk buildings.

Another commenter emphasized that the insurance industry is increasingly refusing coverage in high-risk areas.

Other commenters said there are unique challenges for flood insurance for multifamily housing. Commenters said stories of multifamily buildings are usually elevated ten or more feet and if the first floor of a multifamily building is already elevated 2–4 feet above the Base Flood Elevation per the FEMA flood elevation, providing increased flood coverage for units located some 22–24 feet+ above the Base Flood Elevation would create unnecessary financial burdens to developers of multifamily projects in cases where no practical alternative to locating a project in the floodplain may be identified.

HUD Response: While HUD appreciates the commenters' feedback regarding insurance coverage limits, HUD does not have the authority to change or alter the NFIP regulations as those regulations are implemented by FEMA. Generally, HUD supports the insurance of multifamily buildings in flood risk areas to the maximum extent possible, noting that they do often face significant challenges protecting the full value of the structure under NFIP. Where there is no practicable alternative to locating a HUD-assisted activity in proximity to flood sources, HUD will continue to require elevation or floodproofing where allowable to ensure these buildings and their tenants are protected.

F. Requests for Clarity on Flood Insurance Requirements

One commenter expressed confusion over the language ''strongly encourages'' and asked HUD to consider replacing this language and to make clear what its expectations would be for flood insurance for those properties outside the FFRMS floodplain.

Several commenters sought clarity on how HUD would determine if flood coverage equivalent to the full replacement cost of the structure would be required. These commenters recommended that the final rule make it clear for developers to know exactly what will be required for flood insurance when making decisions to acquire or develop land for housing use and not to leave it up to the individual developer's discretion.

Other commenters wondered how HUD would enforce the acquisition and maintenance of flood insurance if it is not required by regulation. Who at HUD will have that authority and what training will they receive in order to make them qualified to make this determination?

HUD Response: As discussed in response to opposition to flood insurance requirements above, flood insurance is only required within the 1-percent-annual-chance floodplain. To be clear, encouragement to obtain flood insurance outside the 1-percent-annual-

chance floodplain is not a requirement although grantees are allowed to expand requirements beyond the HUD minimums. HUD does not believe the binary status of obtaining or not obtaining flood insurance requires any particular specialized expertise to determine. Acquisition and maintenance of required flood insurance will be reviewed on a project-specific basis as part of program monitoring requirements, as applicable.

HUD will continue to utilize the direction of the MAP guide to determine the flood insurance coverage requirements for Multifamily FHA projects and the Section 232 Handbook for Healthcare FHA projects.

Exceptions

A. Incidental Floodplain Exceptions

1. Support for Limited Exceptions

Several commenters expressed support for the exceptions at § 55.8(a)(2) for floodplain restoration activities, explaining that the proposed language is more flexible than the current standards, while incurring de minimis impacts to the floodway.

One commenter expressed their support for proposed language to clarify and ensure that floodways assistance would only be allowed for limited floodplain restoration activities and only after engaging in the 8-step decision making process and justifying that there are no practicable alternatives. This commenter explained, citing FEMA guidance, that floodways naturally convey floodwaters downstream and thus designing a floodway and regulating development within that floodway is necessary because any obstruction increases likelihood and elevation of flooding both upstream and downstream.

Several commenters supported allowing safe installation of utility lines to cross floodways where it is the most practicable method for connecting existing lines, reasoning that this is practical because utility mains are often in low-elevation areas and likely to be safe because development codes often require tie ins in these areas and utility line instillation causes only temporary impacts.

One commenter supported allowing removal of man-made structures from the floodway/floodplain. This commenter recommended that HUD amend the rule to make clear that projects restoring wetlands, floodplains, rivers, or other aquatic habitats in alignment with FFRMS objectives are exempt from the 8-step decision making process.

One commenter supported equivalent protections in the LiMWA as the V Zones. Another commenter endorsed the improved protections in Coastal A zones or areas within the LiMWA.

HUD Response: HUD appreciates the support from commenters regarding the exceptions at § 55.8(a)(2). That said, based on feedback received, HUD has made language changes in this section to more clearly delineate the purpose of the section in relation to §§ 55.12(g) and 55.21. Specifically, in § 55.12(g), HUD has removed the requirement for a permanent covenant such that the exemption more logically follows the review process for projects with an incidental floodplain. In § 55.21, HUD has clarified that to be eligible for the alternate processing for existing projects, the project must meet certain minimum eligibility criteria. These minimum criteria include the following: removing all residential units from the floodway, elevating or floodproofing all buildings in the FFRMS floodplain, including existing structures where practicable, and receiving a No Rise Certification for any new improvements in the floodway. HUD intends to produce additional guidance and technical assistance material which will outline the types of activities allowed on properties containing a floodway but not within the floodway itself. HUD notes that under CPD–17–013, it has outlined a methodology that allows certain linear infrastructure to cross a floodway where it is appropriately mitigated and there are no practicable alternatives. HUD also notes that under § 55.12(c), the restoration of wetlands and floodplains is exempt from the 8-step decision making process.

HUD appreciates the support for the equivalent protections across the V zones and the LiMWA. HUD's intent with this revision is to increase the resilience of coastal construction.

2. Exceptions Are Not Protective Enough

Several commenters expressed concerns that proposed exceptions provide insufficient floodway protection. Several commenters urged HUD to prohibit all development and reconstruction within floodways, the deepest and highest velocity portion of drainage, to avoid certain continued losses to HUD projects and safety risks to residents.

One commenter urged HUD to prohibit both critical and noncritical building actions in floodways and coastal high hazard areas, instead of allowing noncritical actions under the circumstances listed in the proposed rule. This commenter reasoned that the focus must not only be on ceasing development in floodways, but also on restoring and re-establishing natural infrastructure. This commenter supports the proposed rule permitting noncritical actions within the remaining two categories—wetlands/1-percent-annual-chance floodplain outside floodways and non-wetlands area outside of the 1-percent-annual-chance and within the 0.2-percent-annual-chance floodplain—but only on a case-by-case basis and requiring the 8-step decision making process.

This commenter supported the proposed amendment prohibiting placing ''community stormwater management infrastructure and water treatment plants'' in floodways due to high risk of becoming inoperative in a flooding event. However, this commenter urged HUD to go further by amending § 55.1(c)(2) to read: ''any critical action located in a coastal high hazard area *or within the existing 100-year or 500-year floodplain maps, to be amended.*'' This commenter also asked HUD to add ''schools'' to the definition of ''critical action'' reasoning that damage to schools causes significant disruption to students and communities.

Several commenters asserted that new construction in floodplains, even under the 8-step decision making process, will have the following negative impacts: (1) waste scarce financial resources on resilience and mitigation activities; (2) subject households, predominantly low-income families, to damage and danger; and (3) continue legacies of exclusionary zoning practices.

One commenter urged HUD to remove floodplain exceptions for residential structural infrastructure (utility lines, pipelines) from the proposed rule. This commenter explained that flooding results in catastrophic impacts to nearby residential drinking water when water, sewer, and wastewater utilities are in flood-prone areas, citing joint EPA and FEMA guidance that these utilities face unique risks in flood-prone areas and that it is cost intensive to build them to resilient standards.

Several commenters asked HUD to provide a clear definition of the incidental floodplain for public comment. One commenter asked HUD to clarify whether part 55 requirements would be triggered if an undeveloped portion of a property is within the floodplain, while the structure itself is not.

One commenter posed the following questions: (1) How did HUD determine that paving floodway areas for basketball and tennis courts is de minimis? (2) Is there a critical number

of projects that cannot avoid paving floodway areas such that this exception is necessary?

Several commenters requested explicit guidance on the methods of utility installation that are permitted/prohibited.

Several commenters stated that HUD should defer to NFIP/local regulations for floodway actions.

HUD Response: HUD appreciates the feedback from commenters regarding concerns over exceptions HUD uses to allow work on properties with a floodway on site. HUD disagrees that all work needs to be prohibited from floodways, noting that many functionally dependent uses must be built in these areas in order to work properly. HUD does not exempt this work from the 8-step decision making process; however, work in these sensitive areas is often the most critical to review for impacts, alternatives, mitigations, and engagement with the public. Under the rule, HUD will prohibit any new residential construction in the floodway with the goal of ensuring the potential to harm human life is minimized. Because of feedback received, HUD has revised the language of § 55.21 to make it clear that residential units must be removed from the floodway, all buildings in the FFRMS floodplain must be elevated or floodproofed where practicable, and a No Rise Certification must be obtained for any new improvements in the floodway, in order for the exception to apply. HUD intends for the alternative processing for existing nonconforming sites outlined in § 55.21 to be used in very rare circumstances and only under the strict review and sole discretion of HUD's Office of Environment and Energy and the Assistant Secretary for Community Planning and Development, where HUD determines the proposed action is protective of human health and the environment. Depending on the nature of the proposed activities in or near a floodway, the alternative processing may require substantial mitigation measures and appropriate documentation to obtain, if approved.

HUD disagrees that funding spent on any mitigation determined necessary through an 8-step decision making process would be considered a ''waste of resources.'' Mitigation that reduces risk and protects life and property can only be seen as a benefit for populations that would otherwise be at increased risk of flooding. Additionally, HUD contends that supporting the resilience of structures in the floodplain better protects those structures against future loss and disagrees that increasing community resilience continues the legacy of exclusionary zoning.

HUD notes the commenters' feedback regarding wastewater treatment and stormwater facilities; however, these facilities, while critical actions, are also functionally dependent on being near water. HUD did not intend to disallow functionally dependent facilities from receiving funding with this rule and as such has allowed an exception for functionally dependent projects which meet the mitigation requirements at § 55.8(a)(2) and complete an 8-step decision making process in accordance with 24 CFR 55.20. This change brings HUD in line with its Federal partners like FEMA in allowing the funding of certain types of functionally dependent facilities.

HUD disagrees that all schools need to be included as critical actions because schools do not have permanent residents and will not be occupied during an emergency.

Examples of de minimis improvements listed in § 55.8(a)(1)(ii)(B) include activities that have minimal ground disturbance or placement of impervious surface area to ensure accessibility where permitted by local ordinances and where it does not increase flood risk to the property. HUD intends to provide grantees, applicants, and responsible entities with technical assistance and guidance to ensure any improvements in a floodway are de minimis and that only compliant work is allowable under this part.

Any action allowed by HUD would also need to be compliant with NFIP and local regulations.

HUD intends to release technical assistance and guidance to help grantees, applicants, and responsible entities better determine when it is appropriate to utilize the incidental floodplain exception at § 55.12(g). HUD notes that projects with an undeveloped portion of the property located within the floodplain will be exempted from part 55 analysis if all requirements under § 55.12(g) are met.

B. Inapplicability of 24 CFR Part 55 to Certain Categories of Proposed Actions Under § 55.12

1. Expanded Exception for Floodplain and Wetland Restoration and Preservation Activities

Several commenters expressed support for the expanded flexibility for parks and recreation uses in combination with restoration and preservation activities. Several commenters explained that the proposed exception will increase the quality of life for HUD-assisted tenants by providing opportunities to connect with nature and the floodplain and wetland habitat where they live, without significant disruption to those areas' function.

One commenter urged HUD to amend the rule to add incentives or favor parks and greenspace projects that incorporate green infrastructure to restore/protect natural ecosystems like wetlands, prairie, riparian corridors, and bayous. This commenter explained that preserving remaining riparian and wetland infrastructure is proven to slow flood waters avoiding future flooding damages, while also providing communities with necessary parks and green space for communities. This commenter cited a study showing that affluent bayou communities received greater government investment in flood protection following Hurricane Harvey than low-income communities as reasoning for going beyond the proposed mandated process towards an incentive model.

Another commenter asked if HUD could expand the flexibility for restoration activities compatible with beneficial floodplain and wetland function beyond parks and recreation activities.

Several commenters asked HUD to explain what kinds of ''structures and improvements designed to be compatible with the beneficial floodplain or wetland function'' would be allowed and asked for this clarification to be included for public comment.

HUD Response: HUD appreciates the support from commenters regarding the expanded flexibility for parks and recreational space within the floodplain. It is HUD's hope that these spaces are maintained as a benefit to HUD-assisted tenants as an improvement to their quality of life without adversely impacting the floodplain.

HUD believes that by allowing greenspace restoration within the floodway, HUD can better incentivize restoration and protection of riparian buffer spaces and wetlands which provide compounding resilience benefits across the floodplain.

HUD does not currently have plans to expand the flexibility for restoration activities beyond what the rule allows because there is no funding for HUD to provide additional incentives. HUD intends to provide additional guidance and technical assistance to help grantees, applicants, and responsible entities discern which improvements and structures are allowed and compatible with beneficial floodplain or wetland function.

2. Removal of LOMA/LOMR Exceptions

Several commenters expressed support for removing both part 55 exceptions for sites that have received LOMAs/LOMRs. Several commenters specifically supported the removal of the conditional LOMA/LOMR exception, explaining that provisions to disincentivize the use of fill will protect natural and beneficial floodplain and wetland functions. Several commenters further reasoned that adding fill to floodplains causes increased flood risk to surrounding properties/areas and expansion of the floodplain. One commenter stated that disincentivizing the use of fill will protect neighboring residents, property, and the environment. Another commenter expressed support for limiting fill within special flood hazard areas. Conversely, several other commenters opposed removing the LOMA/LOMR exceptions. Several argued that doing so would result in an unnecessary administrative burden on borrowers and lenders; and that additional government agencies—HUD and the USACE—would add unnecessary bureaucratic processes. Several commenters asked HUD to define which governmental agency would have final authority to determine if a floodplain change is required. One commenter added that the additional layer of bureaucracy created by requiring projects that are outside the 1-percent-annual-chance floodplain under FEMA's requirements to complete the 8-step decision making process will create confusion and regulatory conflicts and delay much needed housing. This commenter urged HUD to defer to FEMA's expertise on whether a property is outside of a floodplain.

Several commenters asked HUD to clarify whether the requirement to elevate sites with no known or previously occurring flood risk to the respective required standards under each approach will result in requiring completion of the 8-step decision making process before adding fill, per § 55.12(c)(8). These commenters added that if this would trigger the 8-step decision making process, it would cause administrative burden on borrowers and lenders.

Several commenters specifically urged HUD to retain the conditional LOMA/LOMR exception. Several commenters stated that the current conditional LOMR/LOMA system is more effective for determining when fill may be added to remove sites from the 1 percent annual chance floodplain because FEMA, civil engineers, and local authorities understand the impact to adjoining sites and provide sufficient governmental oversight. These commenters stated that HUD's reasoning for removing the exception on conditional LOMAs/LOMRs to avoid incentivizing adding fill is contradictory or is a moot point, considering that other portions of the proposed rule require the use of fill without limits due to the impact on adjoining areas.

Several commenters disagreed that excepting conditional LOMA/LOMR projects from the 8-step decision making process incentivizes filing floodplain areas, stating that the exception allows developers to incorporate plans to minimize floodplain impacts in the early stages of planning, prior to civil plans required as part of the 8-step decision making process.

HUD Response: HUD appreciates the commenters' support for the removal of exemptions based on LOMAs/LOMRs. As LOMAs/LOMRs act to remove an area or structure from the base floodplain and not the FFRMS floodplain, HUD did not think they would provide the necessary information to remain as an exemption to part 55. Additionally, HUD did not want to incentivize the use of fill in the FFRMS floodplain.

HUD disagrees with commenters' feedback that removing the LOMA/LOMR exemption creates an unnecessary administrative burden on borrowers and lenders because LOMAs/LOMRs do not remove sites from the FFRMS floodplain. Regardless of whether or not exempting conditional LOMA/LOMR projects from the 8-step decision making process incentivizes the use of fill, misaligned Federal processes and policies inherently create a greater burden on practitioners attempting to comply with conflicting rules, so the exemption must be removed to reduce these burdens. As the FFRMS floodplain is defined by the processes laid out in the rule, HUD or the responsible entity has final authority to determine if a site is located in the FFRMS floodplain, based on the appropriate FFRMS definition for the locality. HUD agrees that the rule will expand HUD's regulatory footprint beyond the FEMA-mapped 1-percent-annual-chance floodplain. However, under E.O. 13690 HUD is directed to review a broader area and account for an increasing flood risk over time through the use of the FFRMS floodplain. While LOMAs/LOMRs can be effective tools at determining when sites have been removed from the FEMA mapped 1-percent-annual-chance floodplain, they have no bearing on the state of a site with regards to the FFRMS floodplain.

Additionally, HUD notes that other Federal agencies like FEMA are working on updating their own floodplain management regulations to account for E.O. 13690 and increasing flood risks to Federal investments.

HUD notes that § 55.12(c)(8) is being removed but if a project were to add fill to a site located in the FFRMS floodplain, it would likely trigger the 8-step decision making process under the rule. That said, the rule does not require that elevation be completed with fill and in fact, discourages its use for compliance.

HUD disagrees with commenters' feedback that removing the existing LOMA/LOMR exemption will affect the ability of developers to incorporate mitigation in the early stages of planning. Because the NEPA process mandates that environmental review be complete prior to any choice limiting actions being taken, any mitigations for a project site must be considered prior to construction regardless of the status of a FEMA FIRM change.

C. Exceptions in Proposed §§ 55.13 and 55.14

Several commenters expressed support for the proposed exception for special renewable energy projects, stating that the exception is forward-thinking and will likely result in increased use of energy-efficient technology in HUD projects.

One commenter urged HUD to revise the rule to provide the following limits on this exception: (1) do not permit a streamlined 8-step decision making process for energy efficiency projects that replace systems or appliances with fossil fuel-fired system or appliance under 24 CFR 50.13 and 50.14; and (2) add language to 24 CFR 55.13(f) requiring that proposals to install fossil fuel infrastructure to improve energy efficiency have no feasible electric alternative.

One commenter asked HUD to clarify the threshold for ''limited potential to adversely affect floodplains or wetlands'' for energy efficiency projects seeking the § 55.13(f) exception.

HUD Response: HUD appreciates the commenters' feedback regarding exceptions for renewable energy projects. HUD disagrees that it is necessary to limit this exception to apply only to energy efficiency projects that do not use fossil fuels. HUD wishes for this exception to benefit any project that improves energy or water efficiency or installs renewable energy that does not meet the threshold for substantial improvement and does not wish to limit fossil fuel projects to only those where there is no electric alternative.

HUD intends to provide guidance and technical assistance to grantees,

applicants, and responsible entities acting as HUD to ensure they can properly assess projects seeking the exemption at § 55.13(f) and understand which projects have the potential to affect floodplains and wetlands.

D. Revisions to Categorical Exclusion From Further Environmental Review Under NEPA Under § 50.20(a)(2)(i)

1. Support for Proposed Revisions to Categorical Exclusion

One commenter expressed support for proposed revisions that allow timelier remediation of existing floodplain properties if HUD ensures that any impact resulting from an increased footprint would be fully addressed in the 8-step decision making process. This commenter provided maps of existing affordable housing units overlaid with FEMA flood maps showing many single family homes in flood zones that have already lost money and explained that allowing remediation for these homeowners will allow more low-income homeowners to decide for themselves whether to rehabilitate their homes. This commenter further explained that they would not support this amendment but for the ''hard look'' required by the 8-step decision making process that this commenter hopes will discourage floodplain development.

Another commenter stated that if the 8-step decision making process is part of a full environmental review, the information sought is addressed under NEPA and HUD should avoid repetition.

HUD Response: HUD appreciates the commenters' feedback regarding HUD's plans to align its part 50 regulations with its part 58 regulations.

HUD notes that compliance with part 55, including completion of the 8-step decision making process when required, is included as part of HUD's NEPA compliance regulations under parts 50 and 58.

2. Opposition to Proposed Revisions to Categorical Exclusion

One commenter opposed removing the qualification to categorical exclusion where a rehabilitation project would increase the footprint of a structure within a floodplain or wetland under § 50.20(a)(2)(i). This commenter reasoned that foregoing full NEPA analysis of projects receiving HUD funds that would adversely impact critical habitat and flood mitigation services is counterproductive. This commenter also asked HUD to expand wetland identification protocols beyond the National Wetlands Inventory where necessary.

This commenter also suggested the following revisions to the categorical exclusion list at § 50.19: (1) require environmental review when HUD supports new construction projects with fossil fuel utility service or homebuying assistance for homes that are not all-electric, and (2) qualify equipment purchase and operating costs under § 50.19(b)(13) and (14) to exclude costs associated with newly installed fossil fuel-fired systems and appliances. This commenter explained that fossil fuel extraction and combustion contribute to climate change, increasing the likelihood and severity of flooding and that further government subsidy of climate change inducing housing is an irresponsible use of taxpayer funds. Further, this commenter suggested that HUD could reallocate savings to increase sustainable affordable housing.

HUD Response: HUD disagrees with the commenter's feedback that aligning its part 50 categorical exclusion with its part 58 exclusion will allow adverse impacts to critical habitat and flood mitigation. HUD has utilized this approach for part 58 reviews since 2013 and has not seen the described adverse impacts. Projects that meet this categorical exclusion remain subject to the requirements under part 55 as well as other laws and authorities at 24 CFR 58.5 and 50.4. The potential adverse impacts of a project do not change based on the determination of which entity is responsible under NEPA. Furthermore, HUD notes that before applying a categorical exclusion to a proposed action, HUD or the responsible entity assesses the proposed action for extraordinary circumstances that would require preparation of an environmental assessment or environmental impact statement. Additionally, HUD addresses potential climate change impacts for projects that require an Environmental Assessment or environmental impact statement through the climate change environmental assessment factor. Additional edits to the categorical exclusions at parts 50 and 58 are outside the scope of this rulemaking.

E. U.S. Army Corps of Engineers Permit Exception

Several commenters opposed the proposed removal of § 55.28 when a permit has been obtained from the USACE for a proposed HUD-assisted construction activity in a jurisdictional wetland outside of the floodplain. These commenters questioned whether the USACE consistently implements the 8-step decision making process per FEMA guidance in implementing E.O. 11988 and urged HUD to revise the rule to require that prior to granting relief, HUD confirm that other agencies have adequately completed the 8-step decision making process.

HUD Response: HUD appreciates the commenters' feedback regarding the removal of § 55.28. However, HUD contends that this section was unnecessary because this exemption was rarely utilized by grantees and, under the new § 55.26, HUD maintains a method for adopting another agency's 8-step decision making process when appropriate. Through § 55.26, HUD intends to reduce unnecessary duplication of Federal regulatory processes to support the development of compliant and resilient projects.

Wetlands

A. Approach to Identifying Wetlands in § 55.9

1. Support for Changes to § 55.9

Several commenters supported HUD's changes to § 55.9, broadening its approach for identifying wetlands. Several other commenters acknowledged their support and cited the important biodiversity wetlands provide, along with the ways that wetlands naturally regulate the climate. One commenter supported HUD for looking beyond a ''desktop review'' of landscapes to determine wetlands.

Several commenters specifically supported HUD's proposal to broaden the screening of wetlands beyond the use of USFWS' NWI. One commenter quoted from the USFWS' explanation that the NWI methodology does not effectively identify all types of wetlands and a ''margin of error is inherent.'' Noting this plus the United States Supreme Court's rollback of wetlands protections under the Clean Water Act, the commenter supported backup protocol for identifying wetlands and urged HUD to use the full extent of its legal authority to protect these critical habitats and the important flood mitigation functions they provide.

HUD Response: HUD appreciates the commenters' support for § 55.9 of the proposed rule; however, HUD notes that the rule does not change HUD's definition of a wetland, it clarifies it as being more than what is identified on an NWI map.

2. Recommendations To Increase Wetland Identification Requirements

One commenter stated that the NWI data varies in accuracy and that in order to ensure the accuracy of wetlands determinations, such a determination should be confirmed by an on-site analysis that includes an assessment of the functions of the ecosystem. This commenter went on to say that the analysis should be confirmed with the

USFWS, along with further consultation with the USACE, U.S. Environmental Protection Agency (EPA), and/or State or Tribal aquatic resource regulators. This commenter agreed with HUD's proposal to assess ''biological'' rather than regulatory wetlands and urged HUD to develop a functional analysis methodology in consultation with the Academy of Science and Tribal and State programs for aquatic resources proposed to be impacted by HUD actions.

One commenter stated that resource identification needs to be done in combination with other geospatial tools, such as Light Detection and Ranging (LiDAR) technology. The commenter stated that NWI should not be a primary presence/absence indicator of wetlands, but rather used as part of a suite of remote tools and ''on the ground'' analysis including a functional analysis method to determine the role the resource is playing in flood resiliency and abatement. This commenter recommended additional consultation with the USACE, the EPA, and/or State or Tribal aquatic resource regulators.

Other commenters added that the NWI indicates the general presence of wetlands on a site but fails to accurately capture the full delineation of wetlands at ground-scale, especially for the identification of smaller wetlands of an acre or less. These commenters also supported the proposed requirement for a ''visual assessment'' of a site to help identify wetlands. The commenters suggested that HUD revise the requirement to require evaluation of all undeveloped sites using one of the three proposed methods to ensure that wetlands identification on an undeveloped tract is not left to the visual assessment of an untrained practitioner.

One commenter urged HUD to clearly articulate that a physical review of a property by a qualified wetland scientist is necessary by adding the word ''physically'' to § 55.9(b). If not, this commenter asked HUD to add language explaining in detail how the development community should meet the proposed rule's intent of slowing the destruction of wetlands within communities.

Several commenters emphasized the importance of trained professionals conducting the visual assessment. Other commenters asked whether there are any qualification requirements for the personnel performing the visual screening and whether an environmental review consultant would be acceptable. One commenter asked who at HUD would be adequately trained to perform the visual observation and what this training will consist of.

HUD Response: Existing HUD policy has historically encouraged the use of tools and delineations that go beyond the NWI mapper to determine if wetlands are present on a site. The rule's methodology for wetland identification streamlines that policy into a more actionable and functional process for practitioners and reviewers. It is important to HUD that this rule maintains strong protection for wetlands without increasing regulatory burden. HUD agrees that wetlands are critical habitat and play a vital role in flood mitigation for communities.

HUD disagrees that either an on-site wetlands delineation or LiDAR assessment is necessary or appropriate for every wetland review. NWI maps and visual observations of a site provide sufficient information for responsible entities to preliminarily determine if further investigations are warranted. Requiring fully detailed delineations by certified wetland scientists for all projects on undeveloped land would constitute a significant financial and administrative burden that HUD does not wish to impose on its grantees at this time.

It is HUD's intent to provide subregulatory guidance to help grantees navigate the wetland review process including desktop review, visual inspection, and when delineation performed by a certified wetland scientist would be considered necessary and appropriate. Any of these options may be appropriate and will depend on the associated needs of the project involved. Additionally, HUD may consult with other agencies like USACE, EPA, or USFWS as necessary to ensure potential impacts are appropriately mitigated and/or any necessary permits are obtained. During the 8-step decision making process, HUD also requires responsible entities to engage with the public and interested parties like local, Tribal, and non-profit groups with an interest in the resource.

HUD has floodplain and wetlands subject matter experts who will work with grantees, applicants, and responsible entities to ensure compliant reviews are performed in accordance with E.O. 11990.

3. Concerns With Changes to § 55.9

Some commenters suggested if a wetland is suspected, sites should be evaluated by the NWI, State, and local wetland and stream maps, hydric soil maps, topographic maps, and historical imagery. These commenters said hydric soil maps should be included in the environmental review as part of wetlands protection, similarly to the United States Department of Agriculture (USDA) requirements. The commenters went on to say that if suspected wetlands are identified through these desktop methodologies, the property should be reviewed by a wetlands consultant and receive comment from the USACE.

Another commenter wrote that the several approaches to identifying wetlands in this proposed rule will produce inconsistent and unpredictable results. The commenter said HUD's goal in updating its wetland regulations is ''to streamline them, improve overall clarity, and modernize standards.'' This commenter believes the most effective approach to realizing these goals is through the adoption of the universally recognized definition of wetlands developed by the USACE and EPA.

Several commenters submitted a more specific concern that the meaning and intent of ''visual indication'' is not clear. The commenters urged HUD to clarify the ''visual indication,'' and said such vague terminology may lead to widespread inconsistency in the application of the wetland identification process.

These commenters also asked whether the use of just one of the evaluations (USFWS consultation or NRCS Soil Survey with further evaluation performed by the environmental review preparer) would be sufficient to rule out the presence of wetlands, without the need to complete a wetland delineation.

Several commenters recommended that HUD completely remove the first method from its final rule. The commenters argued that the job of the USFWS is not to consult on wetlands, rather sites should be evaluated by the NWI, State, and local wetland and stream maps, hydric soil maps, topographic maps, and historical imagery and the property should be reviewed by a wetlands consultant with comment from the USACE.

One commenter pointed out that it is not clear in the proposed rule whether the three methods provided are in order of preference or if any one of them can be selected to rule out the presence of wetlands. Commenters also requested that HUD clarify whether once a site has screened inconclusive for potential wetlands, a developer may rely on citing just one of the three methods outlined to conclude there are no wetlands onsite.

HUD Response: HUD agrees with commenters that when NWI maps are unavailable or responsible entities feel they may be inaccurate, HUD does allow grantees to use best available information to support their

conclusions. This can include local and State maps, soil maps, topographic maps, and historical imagery. This has historically been, and continues to be, HUD's approach to wetlands review under the rule. HUD disagrees that the rule's approach to wetland identification will create inconsistent and unpredictable results. The definition for wetlands as used by the USACE and the EPA stems from the Clean Water Act and covers a narrower definition of wetland which is tied into their respective permit authorities.

It is HUD's intent to provide subregulatory guidance which will help grantees navigate the wetland review process including visual inspection and when delineation would be considered necessary and appropriate.

As the Federal agency tasked with managing the NWI mapper, USFWS is the first agency consulted if a potential issue or deficiency with the NWI is identified.

B. Limitations of HUD Assistance in Wetlands in § 55.10

Several commenters argued that the rule should prohibit all new construction in wetlands. One commenter said that subjecting construction in wetlands to the 8-step decision making process is not enough and that the importance of wetlands in lessening the impact of both riverine and coastal flooding should spur HUD to take additional steps to prevent new construction within them. The commenter emphasized that wetlands and wetland vegetation provide low-maintenance storm mitigation by storing water and slowing the speed of flood waters, along with serving as storm surge protectors. This commenter also noted that coastal wetlands are often viewed as cultural resources by the surrounding communities who view the continued encroachment of development into these areas as a destruction of their heritage. One commenter urged HUD to use stronger language prioritizing the preservation of wetlands and firmly assert that wetland and riparian corridors should be avoided. The commenter opined that Federal dollars should not be used to develop properties that put people in harm's way.

Several commenters emphasized the importance of nature-based solutions and existing green infrastructure known to slow flood waters and protect communities such as wetlands, prairies, riparian corridors and/or bayous as well as reconfiguration of the project footprint and incorporating resilient building standards. One commenter asked HUD to add specific provisions to the proposed rule protecting wetlands and incorporating green infrastructure and to conduct an economic analysis through case studies on various high-flood-prone communities to show that protecting the riparian corridors and wetland green infrastructure would be more cost beneficial than allowing development and covering properties with insurance.

One commenter recommended that all Federal agencies calculate the effects of wetland loss through funding and permitting programs in accordance with E.O.s 11988 and 13690. The commenter noted that Step 5 in FEMA's ''Guidelines for Implementing E.O. 11988 and E.O. 13690,'' published October 8, 2015, states that the concepts of ''Minimize, Restore, Preserve . . . apply if a proposed action will result in harm to or within the floodplain'' and defines ''harm'' to apply to both lives and property, and natural and beneficial floodplain functions. Therefore, the commenter went on to say, it would seem logical that any unavoidable impacts to natural infrastructure within a floodplain, including wetlands, should be mitigated for within the sub-watershed effected and provide ecosystem services to the same locality where the impacts occurred.

Another commenter asked if the impact to one or more acres of non-jurisdictional wetlands is proposed, how HUD will manage the mitigation requirement. This commenter urged HUD to define the one-acre mitigation policy. The commenter noted that compensatory mitigation for jurisdictional wetlands is well-established and widely understood but the prescription of compensatory mitigation for disturbance to more than one acre of non-jurisdictional wetlands is not clear in the proposed rule, and HUD should indicate that it is not required for non-jurisdictional wetlands.

Another commenter asked for clearer information about the costs and process of purchasing compensatory mitigation for non-jurisdictional wetlands.

Another commenter stated that they do not agree that wetlands mitigation should be limited to impacts greater than one acre since any loss of wetlands and floodplains impacts communities and water quality by impairing the ability of watersheds to provide resiliency and flood storage capacity during storm events. This commenter also said that they do not agree with an approach whereby mitigation would be translocated to an in-lieu-fee or banking instrument which is not providing direct benefits to the impacted reach of the waterway and associated floodplain.

HUD Response: HUD disagrees that new construction should be entirely barred from wetlands and that the 8-step decision making process is not enough. While HUD agrees that wetlands are important and play important roles as critical habitat and flood protection, an outright ban on construction would have significant adverse impacts on development nationwide. HUD will continue to fund new construction in wetlands where it has been demonstrated that no practicable alternative exists and that all necessary mitigation measures have been taken. HUD acknowledges that many communities identify coastal wetlands as cultural resources or important heritage sites and notes that consultation requirements on historic and culturally significant resources are covered under the National Historic Preservation Act (NHPA). No part of this rule exempts sites from review under the NHPA or any other applicable Federal laws and authorities.

HUD agrees with commenters on the importance of nature-based solutions. HUD is seeking to strengthen the commitment to use nature-based floodplain management approaches where practicable by identifying specific strategies and practices that have proven effective in increasing flood resilience and environmental quality, identified in § 55.20(e). These strategies include encouraging the use of natural systems, ecosystem processes, and nature-based approaches when developing alternatives for consideration where possible.

HUD continues to work with FEMA and other Federal partners to minimize any adverse impacts to wetlands from HUD funded projects. In addition, in cases where multiple funding sources are anticipated, HUD recommends utilizing the Unified Federal Review (UFR) to assist in the collaborative cross-agency/Department discussions to resolve any differences across the agencies and ensure cohesion in funding and goals for the project. Additionally, it should be noted that HUD has procedures in place to adopt the environmental reviews of other Federal agencies to avoid unnecessary duplication of effort.

HUD intends to provide grantees, applicants, and responsible entities training and technical assistance to assist them in utilizing appropriate mitigation measures when non-jurisdictional wetlands have unavoidable impacts. Historically, these mitigations have included various forms of compensatory mitigation, and the rule is not intended to change this provision. The use of any compensatory

mitigation is not viewed as a substitute for the requirement to minimize impacts to the maximum extent possible.

Changes to the 8-Step Decision Making Process

A. Roles and Responsibilities

One commenter asked HUD to clarify who will conduct encroachment and other floodway analysis and how that analysis is to be done under the new § 55.21. This commenter stated that FEMA's current guidance is for the community or developer to conduct it and explained that most local permit officials are not qualified and thus require the developer to pay for an engineer to conduct encroachment analysis.

HUD Response: HUD has floodplain and wetlands subject matter experts who will review and make recommendations for exemptions requested under the § 55.21 provision. HUD and responsible entities may rely on project engineers, Federal science agencies (*e.g.,* FEMA, USACE), and other experts as needed, depending on the nature of the flood risk and the project proposed.

B. Consistency With FFRMS and New Sections

One commenter expressed support for the proposed updates to the 8-step decision making process to provide clarity and alignment with the FFRMS.

One commenter recommended that wherever HUD defines FFRMS floodplain identification methods, it should consistently use terms referring to both elements of the definition—flood elevation and floodplain extent.

Several commenters asked for clarification whether improvements within the 0.2-percent-annual-chance floodplain will trigger the 5- or 8-step decision making process considering that CISA maps are not currently available and HUD does not predict national coverage for years. These commenters urged HUD to make FFRMS guidance clear and methodical to avoid leaving room for interpretation.

Several commenters suggested that HUD define ''areas required for ingress and egress,'' a triggering ''action'' under § 55.20(a), and that the definition should exclude public thoroughfares, which these commenters reasoned including could stretch the covered area further from a development than necessary. One commenter cautioned that including ingress/egress to an action may increase HUD or property owner liability for harm to residents occurring on roads off the subject property. This commenter stated that neither HUD nor borrowers are authorized or responsible for road conditions of the subject property, citing that a majority of flood-related fatalities occur on roads during floods.

Several commenters urged HUD to address how the FFRMS applies to infrastructure projects by incorporating mitigation considerations (*e.g.,* useful life, ingress/egress) and requirements for infrastructure projects in § 55.20(e). These commenters asked HUD to mandate elevation for ingress and egress to flood-prone areas, as well as mitigation measures based on the site's entire landscape for critical utilities where elevation is not possible (*e.g.,* stormwater). These commenters reasoned that the proposed steps in § 55.2(b)(3) are insufficient because grantees increasingly use CDBG, CDBG–DR, and CDBG–MIT funds to construct and improve bridges, water utility lines, and other critical infrastructure not subject to the structure-specific elevation requirements in § 55.20, despite the preamble's recognition of the vulnerability of essential infrastructure to flood damage.

HUD Response: HUD appreciates the commenters' support for the proposed changes to the 8-step decision making process to provide clarity and alignment with FFRMS. HUD recognizes that floodplain terminology can be confusing for grantees, applicants, and responsible entities and HUD intends to provide significant technical assistance and training to help ensure that practitioners are using the correct language to refer to various aspects of the floodplain.

As described in the proposed rule, where CISA is unavailable to define the FFRMS floodplain, grantees, applicants, and responsible entities will use the 0.2-percent-annual-chance floodplain if it is available for non-critical actions and FVA +2 feet when it is not. Note that it is the FFRMS floodplain that will trigger the need for a 5- or 8-step decision making process, regardless of the method used to define it. For critical actions, projects must utilize the higher of FVA +3 feet or the 0.2-percent-annual-chance floodplain if it is available. HUD expects to provide training and technical assistance covering the various methods for defining the FFRMS floodplain along with the 8-step decision making processes to grantees, applicants, and responsible entities which should help them maintain compliance across their project portfolios. HUD disagrees that the 8-step decision making process is insufficient for infrastructure projects and notes that elevating infrastructure is often not practicable. In these cases, HUD requires infrastructure be floodproofed and protected through other means than strictly elevating it. CPD–17–013 outlines that critical infrastructure like bridges needs to be elevated or floodproofed to the 0.2-percent-annual-chance floodplain. This is also in keeping with the FEMA requirements for critical facilities.

HUD notes that the 8-step decision making process for critical actions does require projects to consider ingress and egress along with alternative locations for the project with the intent of removing it from the floodplain if practicable. Access to sites is vital to the functional use and safe evacuation of a site during a flood and therefore must be considered as part of the 8-step decision making process. HUD disagrees that consideration of ingress and egress will create any greater liability for property owners than otherwise would exist if they maintained unsafe conditions. Road conditions during a flood are not considered in this analysis beyond their ability to function as ingress and egress to a site.

C. Public Notice and Comment in Steps 2 and 7

Several commenters urged HUD to shift the onus from residents having to look to newspapers or government websites to identify projects that may affect them. One commenter urged HUD to require providing comprehensive proposal details to impacted communities and soliciting their feedback in as many forms/methods necessary, beyond posting to a government website or newspaper. Several commenters urged HUD to shift notice and comment requirements to a community-led planning model, mandating earlier engagement of impacted communities, carried through project lifecycles. These commenters asserted that more substantive participation of impacted communities will: increase likelihood that residents will support projects and help to address any obstacles; improve community understanding of flood risks and how they can individually prepare; reinforce a sense of community; and lead to better project outcomes.

One commenter specifically sought revisions to § 55.20 to require that flood risk assessment and project design criteria steps be co-produced with impacted residents and require flood mitigation assessment to weigh community members' lived experiences (*e.g.,* intended uses, flood susceptibility, population-specific concerns) equally with technical modeling assessments. This commenter explained that residents' familiarity with the property allows them to identify characteristics/

risks that site developers and engineers may otherwise miss, such as stormwater issues and critical ingress/egress.

Several commenters sought clarification on the deadline meant by ''earliest possible time of a proposal'' for sending required Initial Notice required under § 55.20(b). In clarifying ''earliest possible time,'' these commenters asked HUD to consider a developer's planning process, explaining that developers would need detailed plans to prepare the initial notice and that developers may not be able to respond to comments until later in a project timeline. Another commenter asked if the proposed rule would change public notice publication timing.

One commenter urged HUD to amend § 55.20(b)(2) from providing ''a minimum of 15 calendar days . . . for comment on the public notice'' to a minimum of sixty (60) calendar days, which this commenter stated will create no additional delay to the lengthy building process or economic harm, while providing necessary opportunity for public awareness.

Several commenters expressed support for the option to publish Steps 2 and 7 notices on an appropriate government website as an alternative to local news outlets.

Several commenters raised concerns that the public's lack of access to, or knowledge of, government-operated websites may decrease the efficacy of public notices. One commenter asked HUD to consider requiring publication in local newspapers circulated in print and online, characterizing this as a more practical alternative to government websites.

Several commenters sought clarification on what classifies as an ''approved government website'' for public notices and who at HUD would be authorized to ''approve'' websites. Several commenters asked if ''government website'' refers to local, State, or Federal government websites. Commenters also asked HUD to clarify who at HUD has the authority to determine what is or is not an ''approved'' site. Several commenters asked HUD to detail the roles and responsibilities for public notice.

Several commenters asked whether HUD would publish the 8-step analysis and Finding of No Significant Impact (FONSI) on HUD's website for public comment. One commenter asked what the required length of comment periods for a FONSI for choice-limiting actions under part 50 would be and what the typical comment period length for these actions is. Another commenter asked HUD to describe its current notice and comment process for floodway projects under part 50 at both the environmental assessment and ''categorically excluded subject to'' levels of review.

HUD Response: HUD appreciates commenters' feedback regarding the solicitation of public engagement through additional means other than government websites or newspapers; however, HUD will not currently expand the requirement. HUD recognizes that community outreach requires valuable time and resources and while HUD would hope that all affected community members participate in any public comment process, it cannot mandate participation. HUD follows the public engagement considerations as laid out in 24 CFR 50.4, 24 CFR 58.59 and 40 CFR parts 1500–1508 where appropriate. While HUD appreciates anecdotal community input regarding flood risk and encourages projects to consider this information, HUD cannot rely solely only on this information for decision making. Because the 8-step decision making process for floodplains and part 55 compliance falls under laws and authorities at §§ 58.5 and 50.4 for applicable project activities, grantees, applicants, and responsible entities must complete all parts of the process prior to engaging in any choice limiting actions. HUD field staff from the Office of Environment and Energy are available to assist in determining if it is the right time to publish their early notices under § 55.20(b).

HUD disagrees with the commenters' statement that increasing the early notice publication timeframe from 15 to 60 days would cause no additional project delays. HUD believes an increase of this magnitude at this time would cause significant project delays and provide little benefit for public awareness. HUD does not intend to increase the early public notice period at § 55.20 to 60 days at this time.

HUD appreciates the commenters' support for the use of government websites to distribute public notices under part 55. This rule requires that an official government website used for public notification must include accessibility features and languages necessary to ensure the affected community has access to provide meaningful public feedback. The rule clarifies responsibility for public notices falls to the responsible entities who complete the 8-step decision making process. HUD intends to provide grantees with necessary training and guidance to support their efforts at ensuring any government websites used are appropriate. Additionally, under Title VI of the Civil Rights Act of 1964, Executive Order 13166, and in accordance with the U.S. Supreme Court ruling in *Lau* v *Nichols,*[41] recipients of Federal financial assistance are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. This means that a government website would need to meet the accessibility requirements all HUD programs are subject to in order to be considered acceptable.[42] The rule does not change the responsible entity's responsibility for publication.

D. Clarifications and Recommendations

One commenter expressed support for the proposed Step 4 impact evaluation language, while stressing that in addition to evaluating the impacts, the evaluation process must include mitigating loss of natural functions within the impacted watershed where avoidance is not feasible.

Several commenters sought clarification in the rule of what information is needed to meet the requirement to demonstrate that runoff from a proposed development would not impact surrounding properties under § 55.20(d)(1)(ii)(C), and whether it would be sufficient to document compliance with local requirements. These commenters explained that many local ordinances require total stormwater volume not increase from pre- to post-construction; however, the addition of fill to any floodplain will generally result in watershed changes, including increased stormwater volume.

One commenter asked HUD to work with Federal partners to develop post-regulatory guidance and training to inform Steps 4 and 5 that clearly define: the values of floodplains, wetlands, and nature-based solutions; the ecosystem process/functions that generate these values; and the bio-geomorphology (ecological interactions between hydrology, geomorphology, and biology of floodplain environments) and attributes of ''functional'' floodplains. This commenter stated that the proposed rule and Guidelines for Implementing Executive Orders 11988 and 13690 fail to adequately describe these values and attributes, resulting in this commenter regularly seeing local agencies incorrectly interpret ''functional'' floodplains and allow projects to proceed that fail to protect and restore floodplain functions (*e.g.,* planting grass for parks). This commenter explained the value of supported floodplain bio-geomorphology, along with the four attributes that must be attained to

[41] 414 U.S. 563 (1974).

[42] 68 FR 70968.

achieve it, that HUD should incorporate into guidance: (1) connectivity between the floodplain and its river/stream; (2) necessary timing, magnitude, duration, and frequency of flow from connected water source; (3) special scale; and (4) habitat and structural diversity.

HUD Response: HUD appreciates the commenters' support for the proposed Step 4 impact evaluation language. HUD recommends that project specific environmental review questions be addressed by Regional and Field Environmental Officers from HUD's Office of Environment and Energy. HUD notes that the rule does not mandate how elevation is achieved and recommends that applicants concerned about runoff on their property utilize methods of elevation that do not increase surface flow.

HUD intends to provide technical assistance and guidance to grantees, applicants, and responsible entities for all 8 steps of the 8-step decision making process to help ensure compliance with E.O. 11988, E.O. 11990, and E.O. 13690.

Due to the potential for an increased regulatory burden, HUD does not intend to require grantees, applicants, and responsible entities to track the locations and quantities of growth and development in the floodplain over time as part of their 8-step analysis.

HUD notes that § 55.20(d)(ii)(C) does not forbid a project from impacting surrounding properties; however, those impacts must be considered and documented. HUD projects are required to follow all relevant laws and authorities.

E. Environmental Justice Requirements

Several commenters expressed support for this provision as a step towards HUD's responsibility to address environmental justice and equity impacts of floodplain management and decision making processes.

One commenter urged HUD to target robust technical assistance towards communities with limited resources to implement the 8-step decision making process.

Another commenter urged HUD to engage the public in developing guidance, and for that guidance to address the following topics: (1) detail how HUD will weigh environmental justice impacts; (2) provide streamlined decision making for activities that mitigate flood risk or wetland loss or that provide co-benefits; and (3) detailed actions manifesting HUD's commitment to nature-based floodplain management approaches.

One commenter raised concerns that the proposed environmental justice review provisions fail to mandate public participation and substantive analysis of proposed actions by including flexible language that incentivizes not engaging historically underrepresented communities in land decisions that impact them. Specifically, this commenter urged HUD to delete ''(if conducted)'' from § 55.20(f)(2)(iii) (''If the proposed activity is located in or affects a community with environmental justice concerns . . . the reevaluation must address public input provided during environmental justice outreach (if conducted) . . . .''). This commenter reasoned that permitting developers to forego environmental justice outreach where census data/mapping programs do not identify a community of concern inappropriately shifts the burden onto community members to identify and mitigate hazards and could result in HUD supporting development near hazardous sites that are not yet documented on a map. This commenter also stated that non-discretionary public outreach requirements align with other HUD rules, citing HUD's environmental justice worksheet's instruction that project planners should always mitigate environmental justice impacts.

The same commenter also urged HUD to revise the proposed rule to clearly define the substantive analysis necessary to adequately conduct an environmental justice review, suggesting that HUD incorporate guidance from other administrative agencies, citing the EPA's Legal Tools to Advance Environmental Justice as an example. This commenter explained that analysis must account for the cumulative risks from all environmental hazards, beyond flooding itself, illustrating with the example that discriminatory zoning, concentration of hazardous uses, and disinvestment in infrastructure mean that when flooding occurs, communities also experience hazard contamination and harmful emissions from producers' increased emergency outputs.

Several commenters stated that if the 8-step decision making process is part of a full environmental review, NEPA will address environmental justice information and discouraged requiring duplication.

HUD Response: HUD appreciates the commenters' support for the proposed rule's steps towards addressing environmental justice and equity impacts of floodplain management and decision making processes. HUD intends to issue updated guidance for advancing environmental justice and coordinating public engagement under the 8-step decision making process with any ongoing engagements associated with environmental justice goals. Additionally, HUD created a new Environmental Assessment factor for environmental justice in 2022 which requires environmental review preparers to outline potential project impacts and mitigations for environmental justice.

HUD disagrees that the requirement for engaging communities facing environmental justice issues inappropriately shifts the burden of identifying and mitigating hazards onto those communities that are not identified as communities of concern. HUD mandates public participation in the 8-step decision making process in Steps 2 and 7 which require an early and final public notice respectively regardless of the community affected. Feedback received as part of the public participation process is intended to inform decision making related to site locations and mitigation measures, but the responsibility for identifying and mitigating hazards is limited to HUD and the responsible entity. HUD also notes that environmental justice is a required consideration as listed at 24 CFR 50.4 and 58.5 and is not limited to part 55. The rule simply requires coordination of public outreach efforts if they exist.

Elevation and Floodproofing

A. Overall Resilience

1. Elevation Is Insufficient To Increase Flood Resilience

Several commenters urged HUD to keep in mind that FFRMS is more than just an elevation standard, but rather a broad framework to increase flood resilience and preserve floodplains.

One commenter urged HUD to focus more on the overall health of the floodplain itself rather than the ability of a structure to withstand a flooding event. This commenter said that focusing on the effects an activity has on floodplains and analyzing and mitigating for the benefit of the watershed effected would comply with the intent of E.O. 11988 and E.O. 13690.

One commenter asked HUD to revise the rule to encourage a wide range of resilience measures, to better conform with E.O. 13690's requirement that agencies use nature-based approaches wherever possible. This commenter reasoned that while the proposed elevation standards have a potential to significantly reduce damage, nature-based measures like wetlands restoration are more effective over a large area, in cost and environmental values, citing a case study comparing cost effectiveness of nature-based and coastal adaptation. Another commenter pointed out that ''resilience'' is not

defined in the proposed rule and that the elevation standards demonstrate a concern only for lost property rather than harm to people after a flood event.

Another commenter noted that for some projects, including those deemed as ''critical'' (such as community assets like hospitals, fire stations, and water treatment facilities) elevation alone might not offer the most cost-effective or durable protections. This commenter urged HUD to require careful consideration for what constitutes ''critical'' and assure protection of ingress, egress, and continued functioning rather than simply protection of the structure itself.

One commenter urged HUD to draw a firm line against allowing ''floodproofing'' in the FFRMS floodplain for any ''new'' build or substantial improvement, or alternatively, clarify that floodproofing through elevation be accomplished through pier and beam construction and not by pouring concrete slabs. The commenter noted that this was especially important given HUD's shift to CISA maps because, without additional funding, those maps could take many years to update and release. The commenter also believed that HUD's attempt to mitigate by adopting the 8-step decision making process is insufficient and would allow continued development within the current 1-percent-annual-chance floodplain maps.

HUD Response: FFRMS is more than an elevation standard, it is a flood risk reduction standard designed as a flexible framework to increase resilience against flooding and help preserve the natural values of floodplains. Resilience in this context is the ability to withstand and recover quickly from flood events. HUD contends that increasing the resilience of the built environment through elevation standards decreases the risk to people who reside in those structures. HUD must account for the impacts of its actions and activities on floodplains and wetlands per E.O. 11990, E.O. 11988, and E.O. 13690. Many HUD programs like CDBG–DR and CDBG–MIT fund wetland restoration and nature-based solutions to flooding issues. HUD agrees with the commenter that nature-based solutions are an effective way to reduce damage and has added language in this final rule at § 55.20(c)(1)(ii) to encourage nature-based solutions as alternatives to avoid floodplain and wetland impacts. HUD also encourages the use of nature-based solutions where feasible as a resilience measure per the guidance found in the Community Resilience Toolkit.[43]

HUD notes that the 8-step decision making process for critical actions does require projects to consider ingress and egress along with alternative locations for the project with the intent of removing it from the floodplain if practicable.

HUD disagrees with the commenter that floodproofing fails to provide adequate flood mitigation for non-residential structures in the floodplain. HUD also notes that floodproofing can be done on any number of foundation types and does not require the use of poured concrete slabs. Additionally, HUD contends that CISA will provide a more realistic value for future risk than existing processes as it will address climate change over time. HUD disagrees that all development within the 1-percent-annual-chance floodplain should be forbidden so long as that development is subject to the requirements and protectiveness of a thorough evaluation through the 8-step decision making process.

2. Encouraging Use of Additional Resilience Strategies

Several commenters suggested a different set of strategies beyond elevation for substantial rehabilitation that would allow for more design upgrades to promote flood resiliency rather than elevating alone.

For example, some commenters recommended that HUD allow floodproofing to be used on residential buildings where there are units below the FFRMS floodplain. The commenters were concerned that the proposed rule could result in reducing the number of garden-style multifamily residential communities in urban locations that cannot comply with the elevation standards. The commenters went onto say that there are other ways such developments can support flood resiliency such as elevated machinery through design initiatives.

One commenter recommended that HUD consider the characteristics of the specific floodplain in addition to flood stage. The commenter said that elevation should incorporate evacuation planning, including evacuation prior to a flood event for resident and first responder safety.

Another commenter wrote to raise the importance of the International Code Council's model codes (''I-Codes''), which are developed in an open forum with a balance of interests represented and due process. The commenter strongly encouraged HUD to require numerous provisions within the I-Codes that provide flood mitigation benefits, including the latest International Residential Code and International Building Code, in order to ensure the most stringent flood provisions for federally assisted construction in flood zones and an enhanced level of resilience for both structures and communities. The commenter went on to emphasize that the National Institute of Building Sciences estimates that building to modern building codes saves $11 for every $1 invested (including earthquake, flood, and wind mitigation benefits) and retrofitting structures to current flood mitigation requirements can provide $6 in mitigation benefits for every $1 invested.

Another commenter supported the adoption of up-to-date modern building codes and standards and urged HUD to adopt the ASCE 7 Minimum Design Loads and Associated Criteria for Buildings and Other Structures, especially Chapter 5 Flood Loads.

HUD Response: HUD believes that floodproofing alone is insufficient to protect residents in the event of a flood and therefore does not allow floodproofing of residential units. HUD contends that units at high risk of flood loss are not safe and do not contribute to HUD's mission of providing safe affordable housing.

HUD appreciates the commenters' feedback regarding evacuation planning and notes that for critical actions, ingress and egress must be considered in the 8-step decision making process. HUD notes that additional hydrology characteristics of any individual floodplain and associated impacts should also be considered during the 8-step decision making process.

While HUD appreciates the efforts of the International Code Council, ASCE and others to increase building resilience and the importance of building codes generally, HUD currently has no intention of adding them into the part 55 requirements. HUD is separately coordinating with an interagency group in an effort to address building codes for HUD-assisted properties.

3. Opposition to Resiliency Requirements

One commenter suggested that because the proposed rule allows ''floodproofing'' instead of elevation, for example, for parking garages, it would cause individuals to potentially lose access to not only their homes but also their vehicles during a major weather event. This commenter suggested this

[43] Information on the Community Resilience Toolkit can be found here. *https://www.hudexchange.info/resource/5981/community-resilience-toolkit/.*

impact would fall on low-income communities, that the proposed rule doesn't craft more resilient livable locations, and that HUD should draw a firm line against ''floodproofing'' in the FFRMS floodplain for any new build.

Another commenter suggested that HUD's proposal unnecessarily expands floodplain management requirements and threatens access to FHA mortgage insurance programs for single family home buyers and multifamily builders. This commenter said that by establishing a higher flood risk standard, the proposed rule is inconsistent with NFIP and creates unwarranted and expansive flood mitigation requirements beyond those established by FEMA.

HUD Response: HUD disagrees with the commenter regarding the use of floodproofing on structures where all of the residential units are elevated above FFRMS. HUD maintains that floodproofing structures allows for resilient development that keeps residential structures out of riskier locations without significantly reducing the availability of land for construction. This is also in keeping with existing HUD regulations under part 55 which allow for the floodproofing of structures that do not have residential units below the floodplain elevation.

HUD disagrees that the rule unnecessarily expands floodplain management requirements. The increasing risk to housing structures and associated risks to human life posed by climate change are well documented. Under E.O. 11988, HUD is directed to protect the public's investment in housing and ensure a resilient housing stock. As such, HUD believes that increasing elevation standards for FHA backed new construction within the 1-percent-annual-chance floodplain is necessary in the Minimum Property Standards. As the Minimum Property Standards update is limited to the 1-percent-annual-chance floodplain, the horizontal extent of the floodplain of concern remains consistent with NFIP.

B. Use of Fill To Achieve Elevation Requirements

Several commenters were concerned about the use of fill within floodplains. Some commenters emphasized that the use of fill could redirect flood waters onto other properties with existing structures or otherwise cause expansion of the mapped floodplain elsewhere. One commenter worried this impact could lead local municipalities to decline to support FHA-financed projects. Another commenter was also concerned that the elevation requirements may cause cities and counties to reject development of HUD-insured or HUD-assisted housing if the sites are required to be elevated above neighboring sites.

Several commenters said that the proposed rule's floodproofing requirement for sites with no known or previously occurring flood risk will be prohibitively expensive. Some commenters noted it may result in reduced density allowable on the site to accommodate increased retention requirements and therefore a further reduction of property value. One commenter emphasized that elevation by fill has become common in the coastal plain of the Southeast and many communities have suffered worsening flooding and septic tank failures as a result of more water being pushed into their yards.

Several commenters suggested alternatives where fill is necessary to achieve elevation requirements, such as requiring that a project retain the volume of water onsite that is equivalent to the volume of fill used. Another commenter suggested that HUD should consider alternatives that would allow exceptions through which the local Floodplain Administrator may provide input on other design considerations for promoting flood resiliency; elevating residential structures above the FFRMS should not be the only option. Another commenter asked HUD to include guidance for how to remedy if neighboring properties are negatively impacted by improvements. Another commenter asked that HUD include what type of information would be needed to demonstrate runoff from a proposed development would not impact surrounding properties.

One commenter pointed out that using fill material to elevate structures will add significant cost to new construction including transport, earthwork, and compacting costs. Such an increase in costs, the commenter noted, might be passed onto low-income homeowners and renters.

Several commenters urged HUD to prohibit the use of fill to achieve elevation requirements altogether.

HUD Response: HUD agrees that use of fill within the floodplain can affect floodplain function. HUD notes that while the rule does increase elevation standards, it does not mandate the method by which elevation must be achieved. Under this rule, HUD would generally encourage grantees to use fill to elevate a site only where no other practicable alternative exists. Instead, HUD's preference is to elevate using methods that do not affect runoff of a site, such as piers or foundation walls. All project impacts, both on and offsite, must be addressed under the 8-step decision making process. It is up to the HUD or responsible entity environmental review preparer to propose mitigation measures which account for any impacts found during the 8-step decision making process though regional HUD staff may be able to provide technical assistance on a project-by-project basis.

According to the RIA, the cost of elevating and floodproofing structures is outweighed by the benefits of flood risk reduction and flood loss avoidance.

C. Cost and Feasibility of Elevation and Floodproofing Requirements

One commenter felt that HUD provided compelling data that the benefits of the proposed two-foot-above standard far exceed the costs, and without a standard, property owners would tend to under-insure and under-mitigate relative to the flood risk.

Another commenter argued, contrary to the proposed rule, that the cost of elevating properties is a financial burden to homeowners that would not be made up in saved insurance premiums. One commenter referenced HUD's RIA, which notes that the construction cost to elevate a new residential structure two feet does not pose a significant burden to small entities in the single family housing development industry and contended that more research is needed to come to that determination. The commenter cited one recent analysis that such costs are anywhere from $20,000–$80,000 and encouraged consideration of HUD's proposal to include the basement in the minimum elevation determination.

One commenter expressed their concern that one-story homeowners would not be able to reserve their only floor for a non-residential use to reduce their compliance costs and do not have the same flexibilities as builders to locate new projects outside floodplains.

One commenter noted that it is difficult to predict if the revised elevation standard is viable because land is forever shifting and changing, especially in wetlands.

Some commenters expressed their concern that requiring existing structures to elevate to 2-feet above the BFE may result in significant pushback from borrowers especially those associated with low-income housing transactions. These commenters were concerned that as a result, needed repairs and upgrades to low-income housing will not happen thus placing an undue burden on existing low-income housing.

Other commenters also expressed concern that it will be infeasible to

elevate an existing property to FFRMS elevation and so the inability to comply will leave housing stock in disrepair. Moreover, one commenter suggested that for the 40 percent of the U.S. population that resides in coastal communities—many of whom live in densely populated urban areas with limited alternative locations for development—raising a building several feet above BFE is not feasible. The commenter urged HUD to make exceptions where a building can be elevated above BFE but not as high as the FFRMS flood elevation.

One comment focused specifically on communities that may have restrictions on building heights for multifamily developments. Since, in those cases, the proposed rule's increased elevation requirements may result in a development exceeding building height requirements, this commenter urged HUD to work with FEMA to develop incentives within the ''Community Rating System'' for building additional stories on multifamily buildings located in floodplains instead of building horizontally. The commenter suggested that additional stories may be possible if they would increase a building's Community Rating System rating and result in cost savings to the community.

Several commenters asked for HUD to clarify how an existing multifamily structure with a basement could be practicably elevated above BFE.

HUD Response: HUD appreciates the commenters' feedback regarding the benefits and costs of the BFE+2 elevation standard. HUD's RIA determined that the cost of the increased elevation standard would be outweighed by the benefits of flood risk mitigation including flood loss avoidance and flood insurance cost reductions. HUD believes the RIA reflects the best available economic data on costs associated with flood insurance and flood risk.

HUD notes that per the rule, residential units will need to be elevated and not floodproofed for new construction and substantial improvement activities if they are located in the FFRMS floodplain. HUD disagrees that any potential changes in the land make it impossible to determine if the elevation standard is effective. HUD notes that non-residential floors can be floodproofed without elevation.

HUD contends that elevation and floodproofing of low-income housing is a needed repair or upgrade for these facilities, so funding spent on elevating and floodproofing these facilities is necessary. Any repairs that meet the threshold for substantial improvement as defined at § 55.2(b)(12) will trigger requirements for elevation. HUD does not currently have any plans to allow exceptions for buildings which can be elevated to BFE but not the FFRMS floodplain. HUD appreciates the feedback regarding populations living near the coasts as it highlights the need for the rule.

HUD notes that HUD funded projects must also be in compliance with local ordinances including those on height restrictions for design. Additionally, the Community Rating System is a function of NFIP regulations which fall under the purview of FEMA. HUD has no authority to grant incentives under the Community Rating System.

D. Strategies To Restore and Preserve Beneficial Values of Floodplains and Wetlands

Several commenters expressed support for HUD's commitment to nature-based floodplain management solutions through proposed § 55.20(e) and asked HUD to encourage projects to assess mitigation opportunities that restore natural floodplain and wetland functions proximate to project sites wherever practicable. One commenter expressed support for streamlining decision making for nature-based approaches.

Several commenters explained that nature-based approaches retain excess water and slowly release it back to natural drainage systems while improving water and air quality, recreational function, heat mitigation, and property aesthetics (citing FEMA and National Wildlife Federation research). One commenter described the strategies deployed for three successful nature-based mitigation projects of varying scope—a wetland and shoreline stabilization project, a creek restoration project in a residential and business development, and a stormwater resilience project in a flood-prone residential neighborhood. Several commenters reasoned that this rule's focus on nature-based solutions aligns with Federal adaptation strategy outlined in E.O. 14072, E.O. 13960, and the Biden-Harris Administration's Roadmap to Accelerate Nature-Based Solutions, encouraging HUD to use the Roadmap and its companion resource guide to further identify specific practices proven effective.

Several commenters encouraged HUD to include the following in mitigation guidance and training: (1) promote effectiveness of landscape-level practices encompassing the full property, including natural stormwater strategies (*e.g.,* bioswales, retention ponds); (2) provide a suite of strategies flexible to meet varying site-specific needs; and (3) encourage no- or low-adverse impact development practices.

Several commenters expressed support for HUD's efforts to better communicate the ecosystem services that natural systems provide through proposed § 55.20(e)(3), defining restoration and preservation of wetlands and the beneficial functions of floodplains. One commenter provided an Association of State Wetland Managers manual prepared for agency floodplain management staff and others to assess, protect, and restore floodplain ''natural and beneficial'' functions.

One commenter suggested that providing more details on the ecosystem services and economic benefits that wetlands and floodplains provide will increase public acceptance of the rule.

HUD Response: HUD appreciates commenters' support for the nature-based strategies identified in the new § 55.20(e). HUD encourages the use of nature-based solutions where practicable across its portfolio. HUD agrees that nature-based solutions provide significant benefits and ecosystem services to the floodplain and wetland areas in and around projects.

HUD not only encourages grantees to utilize nature-based solutions for floodplain management where possible, but § 55.20(e) requires the restoration and preservation of the natural and beneficial functions of the FFRMS floodplain where practicable. HUD believes these projects can provide significant value to both people in the built environment and the floodplain. Additionally, HUD strongly encourages floodways to be returned to greenspace when feasible.

HUD intends to provide guidance and technical assistance to grantees, applicants, and responsible entities to help them restore and preserve the natural and beneficial functions of the floodplain as part of their project. Additionally, HUD staff from the Office of Environment and Energy are available to help individual projects integrate mitigation into their projects.

E. Questions About Elevation and Floodproofing Requirements

Commenters asked HUD to confirm that the requirement for elevation of a site to or above a 0.2-percent-annual-chance floodplain with no known or previously occurring flood risk will not result in the requirement for completion of the 8-step decision making process before adding fill to modify a floodplain per section § 55.12(c)(8). If the 8-step decision making process would result, this commenter objects to the administrative burden it would place on

borrowers, lenders, and other stakeholders.

One commenter asked whether FHA Multifamily will allow lenders to avoid the FFRMS requirements and add risk to FHA by building with non-HUD funds and refinancing with FHA in a few years.

Some commenters noted that they did not understand the need to use a FEMA Elevation Certificate or FEMA Floodproofing Certificate to document elevations when CISA mapping is used because these tools are used in conjunction with FEMA maps rather than CISA maps.

Commenters also asked HUD to clarify what it means by ''by other means'' and ''from time to time'' when discussing documentation of elevation to avoid inconsistent or unequitable prescription of unknown data requirements.

Another commenter suggested HUD adopt the standard jointly developed by the Association of State Floodplain Managers, the USACE, and FM Approvals for floodproofing non-residential areas below the FFRMS floodplain elevation, which has existed for about 10 years and ensures that floodproofing products perform as designed and advertised.

HUD Response: The rule removes the exemption for LOMA/LOMR from § 55.12(c)(8). Additionally, LOMAs/LOMRs do not remove sites from the FFRMS floodplain. As such, sites within the FFRMS floodplain will be subject to part 55 including, potentially, a full 8-step decision making process. While HUD encourages local and State authorities to match HUD regulations where possible, HUD cannot regulate projects that fall outside the Federal nexus and do not receive HUD funding.

FEMA elevation certificates, floodproofing certificates, or other documentation as directed by HUD, provides the official elevation of structures. This elevation is necessary to compare structures with the FFRMS floodplain and determine if they are subject to part 55 and/or any elevation mitigation requirements. HUD programs must also follow any local or State requirements for documenting elevation if they exist. HUD notes that any documentation HUD directs the use of must at least meet the minimum elevation requirement of the FFRMS floodplain. HUD appreciates the commenter's thoughtful ideas and considerations for use of floodproofing standards; however, this rule requires alignment with FEMA's floodproofing standards at 44 CFR 60.3(c)(3)(ii) and 60.3(c)(4)(i).

The FHA Multifamily program strongly discourages lenders building with non-HUD funds and refinancing with FHA later to skirt HUD requirements as the FFRMS requirements under this rule are critical to protecting the safety of HUD-assisted residents and the long-term resilience of HUD investments.

F. Additional Recommendations for Elevation and Floodproofing Requirements

One commenter recommended that tested and certified engineered flood barriers be used for floodproofing, where applicable. This commenter also recommended that HUD amend its proposed rule to be effective for the ''lowest habitable'' floor of the building.

One commenter suggested that funding be provided via FEMA to provide low interest loans for house raising. The commenter noted the average cost of house raising is over $100,000.

One commenter recommended that HUD incorporate a requirement that parking areas be built to the BFE to ensure a consistent practice that can be anticipated by all stakeholders during project planning.

One commenter emphasized that the residents of communities impacted by floods possess a right of return consistent with human rights law that must be honored. The commenter said that such residents should be provided assistance in recovering via programs such as CDBG–DR.

One commenter recommended that HUD make it clear that elevation requirements apply to the new installation of manufactured housing. The commenter urged HUD to prioritize department-wide actions that increase climate resilience for manufactured housing, including facilitating public investments in flood adaptation projects that would protect manufactured housing, mandating stricter building codes including foundation anchoring standards, increasing access to Disaster Recovery funds, and creating incentives to move manufactured housing to safer sites outside of the FFRMS floodplain. Citing several studies, this commenter explained that manufactured and mobile homes have a higher risk of flooding than other housing types due to location and foundation types; and that natural disasters disproportionately adversely affect these residents due to limited legal protections, limited access to disaster relief, and higher poverty rates and mobility limitations.

One commenter encouraged HUD to implement enhanced construction standards consistently across its programs. The commenter said this would reduce complexity and increase programmatic efficiency.

One commenter recommended HUD exclude FHA multifamily mortgage insurance programs from the FFRMS and any elevation and/or flood proofing requirements outside of the 1-percent-annual-chance floodplain. This commenter pointed out that HUD's Office of Multifamily Housing already promotes resilience against flooding in the absence of a new FFRMS, and these changes, as well as State and local code requirements, increase resiliency for FHA-insured multifamily properties without the confusing and costly FFRMS requirements. This commenter urged HUD to defer to State and local governments to decide what resiliency measures are necessary and workable for multifamily developments in their communities, especially if those properties are not HUD-funded or HUD-assisted. This commenter reasoned that State and local governments typically adopt nationally recognized model codes, tailored to reflect local practices and needs, and that residences are built to these codes to withstand natural hazards while maintaining affordability.

HUD Response: HUD appreciates the commenter's thoughtful ideas and considerations for alteration of this section of the rule; however, currently, HUD has no plans to adopt any floodproofing or enhanced construction standards. Additionally, HUD does not intend to exclude FHA multifamily programs from FFRMS. HUD notes that HUD funded projects are required to comply with local and State regulations where they exceed the HUD minimum standards.

HUD notes that it has no control over FEMA's budget or funding program design. HUD also notes that CDBG–DR is funded through individual supplemental appropriations and, when available, grantees have broad discretion in determining how to use the funds. Homeowners that apply for CDBG–DR funding through grantee-run programs and are deemed ineligible for assistance are still welcome to fund their own repairs.

HUD does not believe that parking areas need to be built to BFE. While HUD would encourage projects to build outside of the 1-percent-annual-chance floodplain where practicable, HUD does not believe it is necessary to elevate parking lots.

HUD appreciates the commenters' request to make it clear that elevation requirements apply to the installation of new manufactured housing that is subject to part 55. HUD has historically interpreted the rule related to the

installation of new HUD-assisted MHUs to be equivalent to the building of new site-built homes under part 55. This would mean that elevation requirements for site-built homes also apply to MHUs subject to part 55. That being said, HUD has decided to revise the rule to clearly state that new siting and substantial improvements of MHUs are included in the part 55 definitions of new construction and substantial improvement, respectively. Additionally, HUD intends to provide subregulatory guidance and technical assistance focused on MHU elevation requirements. HUD also notes that facilitating public investments in flood adaptation projects that would protect manufactured housing, mandating stricter building codes including foundation anchoring standards, increasing access to Disaster Recovery funds, and creating incentives to move manufactured housing to safer sites outside of the FFRMS floodplain all fall outside the scope of this rulemaking.

As discussed earlier in this preamble, it is important to note that FHA-insured single family housing is not subject to part 55 and that FHA-insured single family manufactured housing is not subject to the 24 CFR 200.926d elevation standards of this final rule. Eligibility requirements, including elevation requirements, for FHA-insured manufactured housing can be found at 24 CFR part 3285: Manufactured Home Installation Standards and 24 CFR 203.43f: Eligibility of Mortgages Covering Manufactured Homes, as applicable, which are outside the scope of this rulemaking.

Existing Nonconforming Sites in § 55.21

Several commenters expressed general opposition towards HUD's proposed process for existing nonconforming sites. One commenter urged HUD to seriously consider disallowing construction and reconstruction within the floodway altogether. Another commenter remarked that § 55.21 appears to be a backdoor for HUD to continue subsidizing risky properties. This commenter felt that the provision was too vague and asked a number of questions such as: whether it will apply to buildings built in violation of NFIP or State, local, or Tribal law or ordinances; whether it will apply to buildings below the current FFRMS standard; how will financial risk be assessed for FHA projects; will it apply to hospitals and nursing homes; how will ingress and egress be analyzed; will HUD coordinate with first responders and emergency rescuers; will it apply to buildings with a history of flooding; how much staff time will it take to conduct this process and would that time be better used finding a safe site; whether HUD believes properties with improvements in floodways comply with the requirements of 24 CFR 5.703, especially paragraphs (a) and (f) and whether HUD is waiving 24 CFR 5.703 for applicable programs as well; and whether there is potential for greater litigation. The commenter said that this provision keeps the most vulnerable in harm's way and recommended it be removed from the final rule.

Several other commenters asked for clarity surrounding the process for existing nonconforming sites. One commenter said they found the change to § 55.21 confusing and asked whether the change means that HUD will continue to assist properties in the floodway in violation of its own regulations. Another commenter said the language of § 55.21(b) is confusing and potentially misleading and asked whether HUD would allow buildings with residential units to occupy the floodway as long as the individual units are out of the floodway or whether HUD will exclude buildings containing residential units from occupying the floodway. Additionally, this commenter asked how HUD will ensure building foundations that remain in the floodway are safe. Another commenter wanted clarity as to what stage HUD would be conducting a ''close look'' at the site to determine whether to continue assistance. This commenter was concerned that applicants will be reluctant to proceed with applications without assurance that HUD mortgage insurance will be possible. Other commenters asked whether HUD has examined its FHA and public housing portfolios to understand how many floodway projects will be subject to the ''very rare'' process. This commenter asked whether the alternative process would be used in lieu of oversight and whether any engineers or building science experts were involved in formulating this proposed provision.

Several other commenters supported the proposed provisions relating to existing nonconforming sites. One commenter wrote that they strongly believe that housing preservation and sustainability are complementary and that they recommend HUD pay particular attention to the preservation of existing affordable housing units and the buildings in which they reside. Another commenter welcomed HUD's proposal to address repeatedly flooded properties and urged HUD to pay close attention to repair and reconstruction of multifamily units and to prioritize new protections in communities where residents have been displaced, lost belongings, and required evacuation and rescue. This commenter emphasized that HUD should pay particular attention to communities where such existing structures are a significant portion of the affordable housing stock.

Several other commenters had recommendations for how to change or improve the existing nonconforming site process. One commenter recommended that the footprint of any building located in a FEMA floodway not be allowed to increase in size for rehabilitation purposes. This commenter also discouraged HUD from demolishing existing buildings and instead supported conducting detailed risk assessments to determine the viability of elevation, floodproofing, and relocation. Another commenter urged HUD to defer to NFIP or local regulations for actions within a floodway. Another commenter also suggested that an effective form of mitigation can be the implementation and enforcement of modern building codes for properties being rebuilt due to repetitive losses. Another commenter encouraged HUD to provide funding for buyouts with relocation assistance for properties experiencing repeated loss due to flood damage. This commenter supported HUD policies that increase resilience of existing housing stock but asked HUD to recognize that that is a short-term, temporary measure and that HUD should work towards the long-term goal of eliminating more housing in places at risk of flooding and erosion.

HUD Response: HUD appreciates the commenters' feedback regarding the updates to § 55.21. HUD intends to produce additional guidance and technical assistance to help provide context for when the exemption at § 55.21 should apply. Generally, HUD intends this alternative processing for existing nonconforming sites to be rarely authorized and only under limited circumstances. While HUD has not created an inventory of projects where this rule may be applicable, HUD is responsible for ensuring continued compliance with NEPA and part 55 via monitoring and other tracking mechanisms. HUD is also developing an internal dashboard for environmental review data that will provide additional information on project location and part 55 compliance over time. Regulatory rigidity can be useful in many circumstances but having limited flexibility to allow certain projects to receive necessary repairs/upgrades ensures that HUD avoids placing undue burdens on existing HUD-assisted or -insured housing.

HUD disagrees that this provision will keep the most vulnerable populations in harm's way. HUD contends that by requiring all residential units be removed from the floodway, completion of the 8-step decision making process, and incorporation of all practicable measures to meaningfully reduce flood risk and increase resilience, residents will be protected from future harm. HUD intends to review projects on a case-by-case basis and reserves the right to refuse to approve the project if it believes mitigation is inadequate to reduce the risk sufficiently for resident safety. This alternative processing for existing nonconforming sites is not intended to be used in lieu of oversight at any particular property and it should be noted that the NSPIRE inspection standards require grantees to ensure that all residents live in safe, habitable dwellings, and that the items and components located inside the building, outside the building, and within the units of HUD housing are to be functionally adequate, operable, and free of health and safety hazards.

HUD appreciates the commenter's sentiment that housing preservation and sustainability are inextricably linked and complimentary of one another. HUD also appreciates the feedback from the commenter regarding FEMA designated SRL properties, and HUD agrees that communities with a high percentage of SRL properties are worth particular attention. These properties represent some of the highest risk and HUD wishes to ensure any Federal investment is well protected.

HUD appreciates the commenter's thoughtful ideas and considerations for alteration of this section of the rule. HUD has revised the language of § 55.21 to provide additional clarity and to more explicitly state that all residential units are required to be removed from the floodway under this provision.

HUD does not expressly forbid the expansion of buildings in the floodway under § 55.21; however, any expansion would need to meet a strict set of minimum standards including no residential units, identified evacuation routes, a no-rise certification (as defined by FEMA), and elevation to the FFRMS floodplain. Additionally, HUD may impose any other requirements it deems necessary to ensure the safety of the structure and its occupants. HUD contends that while the section doesn't forbid construction, the requirements laid out will make it exceptionally difficult to expand a building in the floodway. The purpose of § 55.21 is to allow existing buildings to continue to provide safe housing to residents where no feasible alternatives currently exist. HUD notes that changes in local building codes or funding of additional buyout programs exist outside the scope of this rulemaking and require either local governance or acts of Congress to fund.

Minimum Property Standards for 1–4 Unit Residential Structures

Several commenters expressed support for the proposed elevation standards for the FHA Minimum Property Standards. One commenter predicted that the new standards would likely decrease flood losses for families who may be particularly impacted by flooding as they do not have the resources to respond or recover. Another commenter urged HUD to work with the White House Flood Resilience Interagency Working Group to monitor whether the new standard will adequately protect the structures in question. Another commenter supported the BFE plus two feet proposal but said that the 0.2-percent-annual-chance flood approach would be even better. Another commenter hoped that the new elevation standards would incentivize adoption of a freeboard standard matching the HUD Minimum Property Standard to ensure that all new development in special flood hazard areas will continue to qualify for FHA-insured mortgages. The commenter emphasized that such a result would have a tremendous positive impact on improving nationwide resilience to flooding.

One commenter supported the new standards but noted that they may be unachievable by certain properties such as row houses and small lots in high-cost areas where substantial improvements may be cost prohibitive especially for low and middle-income homeowners. This commenter went on to encourage HUD to look to a wider suite of mitigation measures in such circumstances, such as elevation of mechanical systems and installation of backwater valves, which can improve resilience while also being more cost effective. Additionally, this commenter noted that new elevation standards could impact building height limitations and recommended that the revised regulations acknowledge that building height may need to be measured on an appropriate reference plane that is not the ground surface to support resilient construction without putting undue restrictions on building height.

One commenter asked HUD to revise the proposed rule to make the standards for elevation consistent for site-built and manufactured homes. This commenter said that current NFIP standards measure the elevation of site-built homes from the bottom of the lowest floor but measure the elevation of manufactured homes from the bottom of the I-beam. The commenter noted that the space between the I-beam and the lowest floor in a manufactured home is usually used for insulation and duct work, which would be expensive to move versus the cost of the extra elevation of the home. The commenter did not see any evidence to support a higher BFE measurement for manufactured homes and said if the standards were more uniform, it would help manufactured home properties meet the BFE requirements.

One commenter pointed out that HUD's proposed rule speaks to substantial improvements but does not speak to requirements for repairs to homes that are substantially damaged by flooding. This commenter was concerned about the costs of elevating an existing home an additional two feet following substantial damage, especially given that NFIP's Increased Cost of Compliance coverage only provides up to $30,000 for such elevation. Another commenter also expressed concern that elevating a site may negatively impact adjoining sites as previously established draining patterns will be altered, which could lead to objections by local municipalities and rejection of FHA-financed projects.

Another commenter was concerned that even the new proposed Minimum Property Standards were inadequate. This commenter suggested that new construction within the floodplain should be avoided, and existing structures should be removed over time. The commenter went on to suggest that HUD's final rule also include an option or incentive for managed retreat from floodplains whereby new construction in a floodplain is prohibited, and once a HUD-funded property experiences a loss from flooding it should be given the opportunity for a buyout or a one-time replacement for existing loss plus a withdrawal of future Federal funding for the property. The commenter suggested that the managed retreat option is cost-effective, would reduce disaster loss and displacement of tenant and owners, and would improve tenant safety and the quality of floodplain function.

One commenter emphasized the need for a consistent Federal narrative on the required minimal development standard for constructing or insuring a structure with known flood risk, noting that the minimal standard for communities within an NFIP SFHA is the lowest floor at or above the BFE. This commenter was concerned about the potential for confusion if HUD changes its Minimum

Property Standards to two feet above BFE.

One commenter requested to see the proposed rule as it will be implemented—at least at 90 percent completion—prior to final publication in order to provide final comments.

HUD Response: HUD appreciates the commenter's feedback regarding the proposed elevation standards in the FHA Minimum Property Standards update. HUD agrees that updated standards should reduce flood losses for structures residing in the 1-percent-annual-chance floodplain. HUD intends to continually monitor this regulation along with all of its regulations to ensure they are having the intended impact. It should be noted that the update to the Minimum Property Standards elevation requirements is only regulated within the FEMA-mapped 1-percent-annual-chance floodplain and that the FFRMS floodplain requirements outlined in the part 55 update would not apply to FHA-insured single family mortgages.

HUD appreciates the commenters' feedback about properties where elevation may be difficult or infeasible. HUD contends these difficulties are present in only a limited number of structures substantially improved through FHA-insured loans which sit in the FEMA mapped 1-percent-annual-chance floodplain. To avoid this issue, HUD has removed elevation requirements for substantial improvement activities from the Minimum Property Standards update. While newly constructed units purchased with FHA-insured mortgages would still be subject to the elevation requirements, this change would alleviate much of the concern facing homeowners of existing structures which may need to undergo substantial improvements. HUD also contends that not all Federal programs fund the same types of projects; therefore, not all Federal agencies need to regulate to the same elevation requirements. HUD also notes that some programs, such as CDBG–DR, have already imposed higher elevation standards than the NFIP minimums for years. The increased elevation standard for FHA-insured single family new construction will increase the nation's resilient housing stock and help protect the communities that HUD serves.

Also, HUD notes that FHA-insured single family manufactured housing is not subject to part 55 or 24 CFR 200.926d elevation standards under the final rule. Flood elevation standards for FHA-insured manufactured housing can be found at 24 CFR 3285: Manufactured Home Installation Standards and 24 CFR 203.43f: Eligibility of Mortgages Covering Manufactured Homes, as applicable, and are outside the scope of this rulemaking.

Further, for both manufactured homes and stick-built homes subject to part 55, to determine the lowest floor, HUD looks to FEMA's regulations in 44 CFR 59.1 and FEMA's Elevation Certificate guidance or other applicable current FEMA guidance. For manufactured homes in A Zones, FEMA recommends measurement of MHU elevation from the I-beam as a best practice. HUD recommends following FEMA best practice where feasible. For manufactured homes in coastal high hazard areas (Zone V), FEMA requires measurement of MHU elevation from the bottom of the lowest horizontal structural member (*e.g.,* the I-beam).

HUD strongly disagrees that elevation inherently impacts drainage patterns on a given lot. HUD does not require elevation to be completed using any particular method and there are many methods that have no impact on the impervious surface or general slope of a lot. For example, homes may be elevated using pier and beam, knee wall, or crawl space construction methods.

While HUD appreciates the commenters' sentiment that new construction within a floodplain should be avoided, the need for new affordable housing nationwide can necessitate construction in these areas. HUD feels that a ban on new construction in all floodplain areas would have a significant impact on affordable housing availability. Instead, while HUD agrees that avoidance is generally preferred to mitigation, HUD also believes in resilient design and ensuring that construction which does occur is done with appropriate resilient measures. Managed retreat through buyout is an allowable option for local jurisdictions to utilize under existing rules. It should be noted that the rule is intended to incentivize floodplain restoration and preservation activities via an existing exemption from part 55 applicability for such activities. Funding and program eligibility for programs and projects focused on buyout or managed retreat fall outside the scope of this rulemaking and require changes to individual program regulations and/or Congressional funding acts to proceed.

HUD will not release an additional 90 percent draft proposal of the rule for public comment. HUD intends to continuously update and monitor all of its rules and regulations as it sees fit to ensure the continued pursuit of its missions and directives. This includes continued discussions with Federal interagency partners and the White House Flood Resilience Interagency Working Group that may provide useful outside perspectives on any shortcomings or limitations of existing regulations.

A. Question for Public Comment #7: Feedback on the Proposed FHA Single Family Minimum Property Standards

Several commenters supported HUD applying the same FHA single family Minimum Property Standards as were proposed in 2016.[44] One commenter wrote that existing HUD programs, such as CDBG–DR and FHA Multifamily programs, already demonstrate that higher elevation standards are practicable. Another commenter wrote that adopting FHA single family elevation standards consistent with what exists for the Multifamily and CDBG programs will increase equity. This commenter suggested that not expanding higher floodplain management standards across all HUD programs may exacerbate inequities and unacceptably suggest that residents of affordable housing must inevitably tolerate elevated flood risk.

Another commenter encouraged HUD to engage with additional scientific and model experts, home builders and developers, community officials, lenders, realtors, consumer groups, and other Federal agencies before changing how it determines which homes are subject to the Minimum Property Standards requirements. This commenter recognized that single family homes in many communities face the potential for increased severity and frequency of flooding events due to climate change but was concerned that more certainty around the proposed FFRMS floodplain approach is needed before major housing programs are impacted.

One commenter asked HUD to exempt FHA single family newly constructed and substantially improved structures located within the 1-percent-annual-chance (100-year) floodplain from any elevation and/or flood proofing requirements.

HUD Response: HUD appreciates the feedback received from commenters regarding changes to the Minimum Property Standards. While HUD agrees that higher standards can be more protective, HUD contends that they can also be more burdensome. HUD wishes to avoid creating an undue regulatory burden by creating too high a regulatory

[44] 81 FR 74967. In the 2016 proposed rule, the Minimum Property Standards would have relied on an FVA approach requiring elevation of new construction and substantial improvement to two feet above the base flood elevation.

floor through the Minimum Property Standards thereby potentially impacting the availability of affordable housing. HUD does not believe that FHA single-family newly constructed homes should be exempt from this rule. However, based on feedback received, HUD will require that the lowest floor be at least two feet above base flood elevation for new construction, as proposed, but will remove the requirement for elevation of substantially improved homes under the Minimum Property Standards. With this change, the elevation standard in this rule provides a substantial increase in protection without being unreasonably costly or creating an undue hardship on homeowners and builders as confirmed through the RIA and review of multiple alternatives to the rule.

Regulatory Impact Analysis

One commenter stated that HUD's RIA falls short of its mandate under E.O. 12866 because it does not analyze the most readily available alternative to this proposed rule, which is to raise the elevation standard one-foot-above instead of two. This commenter suggested HUD re-release the proposed rule with this analysis before publishing a final rule. Moreover, this commenter said that HUD also used a 2013 new construction study to calculate the costs of retrofitting existing homes, despite recognizing that the cost for substantial improvement projects is significantly higher than for new construction.

The same commenter suggested that HUD measured the proposed rule's benefits using the decreased insurance premiums from an outdated and inaccurate methodology that has been replaced by Risk Rating 2.0. Several other commenters also wrote in regarding FEMA's Risk Rating 2.0 program. One commenter requested that HUD support the reinstallation of flood insurance premium discounts for buildings mitigated through elevation or floodproofing within the Risk Rating 2.0 program. The commenter said these discounts are effective in driving mitigation to reduce flood risk and incentivize mitigation to at-risk buildings.

One commenter recommended that HUD conduct a study of the potential future impacts of implementing the new standards before issuing a final rule. This commenter expressed a lack of confidence in HUD's summary view that the impact is minimal in relation to the actual costs to elevate a home—particularly an existing home—under local building codes and Federal regulations. One commenter noted that the real-world impacts on individuals protected from flood related harms were not factored into the damage reduction found through HUD's regulatory impact analysis.

Another commenter noted that the Risk Rating 2.0 premium reductions for elevating properties should be more transparent. This commenter also noted HUD should consider working with FEMA to clarify financial benefits of elevating properties on flood insurance premiums. Following up on comments made during a listening event, another commenter stated that the expected 30 percent reduction in flood insurance described in the RIA resulting from building a home to base flood elevation plus one, is incorrect. The commenter also stated that HUD has not been transparent with the formula for calculating Risk Rating 2.0 pricing and so there is no easy way to determine if the 30 percent is accurate or inaccurate without obtaining full quotes. The commenter then attached multiple supporting documents that outline an example structure receiving flood insurance rate discounts for elevation that are lower than expected elevation discounts provided in the RIA.

One commenter requested more detailed information as to all aspects of the cost benefit analysis completed for the proposed rule that relate to the value of requiring flood coverage up to the full replacement cost of a building compared to a lesser degree of flood insurance. The commenter asked for more information regarding the value of full replacement cost coverage versus limiting the amount of flood insurance. Another commenter also requested more detail in the RIA (and in the FONSI) before a final rule is implemented. This commenter would like stakeholders to have access to CISA mapping, and clearer information as to when increased flood insurance requirements would apply.

Another commenter asked for clarification because the proposed rule states that CISA methodology would be the required methodology to define the FFRMS floodplain ''if HUD-approved maps are available''; however, the RIA describes the process as the developer being able to enter the project location, the anticipated life of the project, and the project criticality to generate an appropriate amount of climate-informed freeboard.

HUD Response: HUD disagrees with the commenter that the RIA falls short of meeting its mandate in E.O. 12866. According to the Mitigation Framework Leadership Group (MitFLG), BFE+2 is the recommended elevation height for Federal projects. This elevation standard provides a substantial increase in protection without being unreasonably costly or creating an undue hardship on homeowners and builders. The RIA reviewed multiple alternatives to the proposed rule and determined this was a viable option. The RIA used the best available data to make its determination. More recent peer reviewed studies utilizing FEMA's new Risk Rating 2.0 remain unavailable at time of writing and cannot be used to ascertain any better information. Given the unclear outlook of the future of Risk Rating 2.0, HUD felt it was prudent to leave out more recent, incomplete, and unvetted sources from its determination. HUD also notes that calculating damage loss avoidance can be difficult, particularly as it relates to human impacts.

HUD supports its Federal partners' efforts to increase the resilience of housing nationwide and believes that FEMA will have good cause to support any rating system used by NFIP. HUD has no direct authority over the management or implementation of elevation discounts for flood insurance policies. The discounts used in the RIA are based on the best available information and studies at the time of HUD's review. HUD has published all available information used in its decision making in the RIA attachment to the proposed and final rule. HUD encourages stakeholders to review CISA mapping tools as they become available from FEMA and NOAA and other Federal sources. Alternatively, HUD has revised the rule to clarify its position that it permits the voluntary use of formally adopted State, Tribal, and local CISA data, as described in § 55.7(f) and section II.B. of this preamble.

HUD intends to produce implementation guidance for grantees, applicants, and responsible entities to help them correctly utilize available tools to implement CISA. Additionally, HUD intends to provide technical assistance training to help grantees walk through particularly difficult cases.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866, 13563, and 14094

Under E.O. 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. E.O. 13563 (Improving Regulations and Regulatory Review) directs Executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline,

expand, or repeal them in accordance with what has been learned.'' E.O. 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. E.O. 14094 (Modernizing Regulatory Review) amends section 3(f) of E.O. 12866, among other things. This final rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866 as amended by Executive Order 14094 but was not deemed to be significant under section 3(f)(1).

As discussed in this preamble, the regulatory amendments will, based on E.O. 13690 and the Guidelines, require, as part of the decision making process established to ensure compliance with E.O. 11988 (Floodplain Management), that new construction or substantial improvement in a floodplain be elevated above the FFRMS floodplain or floodproofed. HUD notes that E.O. 13690 amended E.O. 11988, Floodplain Management, which was originally issued in furtherance of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*); the Flood Disaster Protection Act of 1973, as amended (Pub. L. 93–234, 87 Stat. 975); and NEPA (42 U.S.C. 4321 *et seq.*). These amendments will also provide a process for determining the FFRMS floodplain that would establish a preference for the climate-informed science approach. This final rule also revises HUD regulations in various other ways, including permitting HUD assistance to be used for a broader range of reasonable activities in floodways and would allow improvements beyond maintenance at sites with onsite floodplains in exceptional circumstances, after completion of the 8-step decision making process. This final rule also revises HUD's Minimum Property Standards for one-to-four-unit housing to require that the lowest floor in newly constructed structures located within the 1-percent-annual-chance floodplain be built at least 2 feet above the base flood elevation. Additionally, this final rule also revises a categorical exclusion available when HUD performs the environmental review by making it consistent with changes to a similar categorical exclusion that is available to HUD grantees or other responsible entities when they perform the environmental review. Other changes clarify, streamline, and update HUD's regulations.

This final rule is part of HUD's commitment under HUD's Climate Action Plan. Building to the standards discussed in this final rule will increase resiliency, reduce the risk of flood loss, minimize the impact of floods on human safety, health, and welfare, and promote sound, sustainable, long-term planning informed by a more accurate evaluation of risk that considers possible sea level rise and increased development associated with population growth.

Regulatory Impact Analysis

Elevating HUD-assisted structures located in and around the FFRMS floodplain will lessen damage caused by flooding and avoid relocation costs to tenants associated with temporary moves when HUD-assisted structures sustain flood damage and are temporarily uninhabitable. These benefits, which are realized throughout the life of HUD-assisted structures, are offset by the one-time increase in construction costs, borne only at the time of construction.

In addition, the likelihood that floods in coastal areas will become more frequent and damaging due to rising sea levels in future decades necessitates a stricter standard than the one currently in place. Sea level along the contiguous U.S. coastline is expected to rise, on average, 10 to 12 inches (0.25 to 0.30 meters) over the next 30 years (2020 to 2050).[45] The Intergovernmental Panel on Climate Change (2019) also confirms that the sea level rise will continue throughout the 21st century.[46]

As discussed in the regulatory impact analysis (RIA) that accompanies this rule, HUD estimates that requiring developers to construct or floodproof HUD-funded or insured properties to two feet above base flood elevation for FHA-insured single family homes subject to part 200 and at or above the FFRMS floodplain for single and multi-family properties subject to part 55 will increase construction costs by $4.492 million to $85.036 million per annual cohort. These are one-time costs which occur at the time of construction. Benefits of the increased standard include avoided damage to buildings, as measured by decreased insurance premiums, and avoided costs associated with homeowners and tenants being displaced. These benefits occur annually over the life of the structures. Over a 40-year period, HUD estimates the net present value of aggregate benefits will total $56.4 million to $324.3 million for each annual cohort of new construction.

These estimates are based on the annual production and rehabilitation of HUD-assisted and insured structures in the floodplain and accounts for the 40 States (in addition to the District of Columbia and Puerto Rico) with existing freeboard requirements. The cost of compliance and expected benefits are lower in these States than in States that have no minimum elevation requirements above base flood elevation. HUD's analysis does not consider benefits due to further coastal sea level or riverine rise. Further increases in sea level rise or inland and riverine flooding would increase the benefits of this rule. For a complete description of HUD's analysis, please see the accompanying RIA for this rule on *regulations.gov.*

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.

With respect to all entities, including small entities, it is unlikely that the economic impact would be significant. As the RIA explains, the benefits of reduced damage offset the construction costs. Further, small entities may benefit more since they are less likely to be able to endure financial hardships caused by severe flooding.

Based on an engineering study conducted for FEMA,[47] the construction cost of increasing the elevation of the base of a new residential structure two additional feet of vertical elevation varies from 0.3 percent to 4.8 percent of the base building cost. This results in an increase in the construction cost of a new house of up to $7,834 per single family home and $4,772 per unit of

[45] Sweet, W.V., B.D. Hamlington, R.E. Kopp, C.P. Weaver, P.L. Barnard, D. Bekaert, W. Brooks, M. Craghan, G. Dusek, T. Frederikse, G. Garner, A.S. Genz, J.P. Krasting, E. Larour, D. Marcy, J.J. Marra, J. Obeysekera, M. Osler, M. Pendleton, D. Roman, L. Schmied, W. Veatch, K.D. White, and C. Zuzak, 2022: Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines. NOAA Technical Report NOS 01. National Oceanic and Atmospheric Administration, National Ocean Service, Silver Spring, MD, 111 pp., *https://oceanservice.noaa.gov/hazards/sealevelrise/sealevelrise-tech-report.html.*

[46] IPCC, 2019: Summary for Policymakers. In: IPCC Special Report on the Ocean and Cryosphere in a Changing Climate [H.-O. Poörtner, DC Roberts, V. Masson-Delmotte, P. Zhai, M. Tignor, E. Poloczanska, K. Mintenbeck, A. Alegría, M. Nicolai, A. Okem, J. Petzold, B. Rama, N.M. Weyer (eds.)]. In press.

[47] *See* Federal Emergency Management Agency, 2008 Supplement to the 2006 Evaluation of the National Flood Insurance Program's Building Standards (2013).

multifamily new construction for a multifamily property located in States with no existing freeboard requirements. Consequently, this would not pose a significant burden to small entities in the single family housing development industry.

These costs are likely higher than would be caused by the increased standards in this final rule because most HUD-assisted substantial improvement projects already involve elevation to comply with the current standard, elevation to the base flood elevation (base flood elevation +0). Thus, elevating a structure an additional two feet would be marginal compared to the initial cost of elevation to the floodplain level.

For these reasons, the undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available through the Federal eRulemaking Portal at *regulations.gov.* The FONSI is also available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Executive Order 13132, Federalism

E.O. 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on State and local governments nor preempts State law within the meaning of the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of UMRA.

Paperwork Reduction Act

The information collection requirements contained in this rule were reviewed by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2506–0151. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

List of Subjects

24 CFR Part 50

Environmental impact statements.

24 CFR Part 55

Environmental impact statements, Floodplains, Wetlands.

24 CFR Part 58

Community development block grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

For the reasons stated in this preamble, HUD amends 24 CFR parts 50, 55, 58, and 200 as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

■ 1. The authority citation for part 50 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 4321–4336e; and Executive Order 11991, 3 CFR, 1977 Comp., p.123.

§ 50.4 [Amended]

■ 2. Amend § 50.4 in paragraph (b)(2) by removing ''(3 CFR, 1977 Comp., p. 117)'' and adding in its place ''as amended by Executive Order 13690, February 4, 2015 (3 CFR, 2016 Comp., p. 268)''.

■ 3. Amend § 50.20 by revising paragraph (a)(2)(i) to read as follows:

§ 50.20 Categorical exclusions subject to the Federal laws and authorities cited in § 50.4.

(a) * * *

(2) * * *

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units and the land use is not changed;

* * * * *

■ 4. Amend § 50.23 by revising paragraph (c) to read as follows:

§ 50.23 Public participation.

* * * * *

(c) All required notices shall be published in an appropriate local printed news medium or on an appropriate government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency. The required notices shall be sent to individuals and groups known to be interested in the proposed action.

* * * * *

PART 55—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

■ 5. The authority citation for part 55 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 4001–4128, and 5154a; 42 U.S.C. 4321 *et seq.;* E.O. 13690, 80 FR 6425; Pub. L. 93–234, 87 Stat. 975; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p 121.

■ 6. Amend § 55.1 by:

■ a. Revising the section heading;

■ b. In paragraph (a)(1), adding the text ''as amended,'' after ''Floodplain Management,'';

■ c. Revising paragraph (a)(3);

■ d. Removing paragraphs (a)(4) and (5);

■ e. Removing and reserving paragraph (b); and

■ f. Removing paragraph (c).

The revisions read as follows:

§ 55.1 Purpose.

(a) * * *

(3) This part implements requirements consistent with Executive

Order 11988, Floodplain Management, as amended, and Executive Order 11990, Protection of Wetlands, and employs the principles of the Unified National Program for Floodplain Management. These regulations apply to all proposed actions for which approval is required, either from HUD (under any applicable HUD program) or from a recipient (under programs subject to 24 CFR part 58), that are subject to potential harm by location in floodplains or wetlands. Covered actions include acquisition, construction, demolition, improvement, disposition, financing, and use of properties located in floodplains or wetlands.

* * * * *

■ 7. Revise and republish § 55.2 to read as follows:

§ 55.2 Terminology.

(a) With the exception of those terms defined in paragraph (b) of this section, the terms used in this part shall follow the definitions contained in section 6 of Executive Order 11988, section 7 of Executive Order 11990, and the ''Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input''; the terms ''special flood hazard area,'' ''criteria,'' and ''Regular Program'' shall follow the definitions contained in FEMA regulations at 44 CFR 59.1; and the terms ''Letter of Map Revision'' and ''Letter of Map Amendment'' shall refer to letters issued by FEMA, as provided in 44 CFR part 65 and 44 CFR part 70, respectively.

(b) For purposes of this part, the following definitions apply:

(1) *Coastal high hazard area* means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) or Flood Insurance Study (FIS) under FEMA regulations, or according to best available information. (See § 55.8(b) for appropriate data sources.)

(2) *Compensatory mitigation* means the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, and/or, in certain circumstances, preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved. Examples include, but are not limited to:

(i) *Permittee-responsible mitigation:* On-site or off-site mitigation undertaken by the holder of a wetlands permit under section 404 of the Clean Water Act (or an authorized agent or contractor), for which the permittee retains full responsibility;

(ii) *Mitigation banking:* A permittee's purchase of credits from a wetlands mitigation bank, comprising wetlands that have been set aside to compensate for conversions of other wetlands; the mitigation obligation is transferred to the sponsor of the mitigation bank; and

(iii) *In-lieu fee mitigation:* A permittee's provision of funds to an in-lieu fee sponsor (public agency or nonprofit organization) that builds and maintains a mitigation site, often after the permitted adverse wetland impacts have occurred; the mitigation obligation is transferred to the in-lieu fee sponsor.

(3)(i) *Critical action* means any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend the useful life of those structures or facilities that:

(A) Produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(B) Provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events (*e.g.,* community stormwater management infrastructure, water treatment plants, data storage centers, generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or

(C) Are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, *e.g.,* persons who reside in hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers. Housing for independent living for the elderly is not considered a critical action.

(ii) Critical actions shall not be approved in floodways, LiMWAs, or coastal high hazard areas unless they meet an exception at § 55.8 or § 55.21.

(4) *Federal Flood Risk Management Standard (FFRMS) floodplain* means the floodplain as defined by Executive Order 13690 and the Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input and further described as applied to HUD-assisted activities by § 55.7 of this part.

(5) *0.2-percent-annual-chance (500-year) floodplain* means the area, including the base flood elevation, subject to inundation from a flood having a 0.2 percent chance or greater of being equaled or exceeded in any given year. (See § 55.8(b) for appropriate data sources).

(6) *Floodway* means that portion of the floodplain which is effective in carrying flow, where the flood hazard is generally the greatest, and where water depths and velocities are the highest. The term ''floodway'' as used here is consistent with ''regulatory floodways'' as identified by FEMA. (See § 55.8(b) for appropriate data sources.)

(7) *Functionally dependent use* means a land use that must necessarily be conducted in close proximity to water (*e.g.,* a dam, marina, port facility, waterfront park, and many types of bridges).

(8) *High hazard area* means a floodway or a coastal high hazard area.

(9) *Impervious surface area* means an improved surface that measurably reduces the rate of water infiltration below the rate that would otherwise be provided by the soil present in a location prior to improvement, based on the soil type identified either by the Natural Resource Conservation Service Soil Survey or geotechnical study. Impervious surfaces include, but are not limited to, unperforated concrete or asphalt ground cover, unvegetated roofing materials, and other similar treatments that impede infiltration.

(10) *Limit of Moderate Wave Action (LiMWA)* means the inland limit of the portion of Coastal A Zone where wave heights can be between 1.5 and 3 feet during a base flood event, subjecting properties to damage from waves and storm surge. (See § 55.8(b) for appropriate data sources.)

(11) *1-percent-annual-chance (100-year) floodplain* means the area subject to inundation from a flood having a one percent or greater chance of being equaled or exceeded in any given year. (See § 55.8(b) for appropriate data sources.)

(12) *Substantial improvement*—(i) *Substantial improvement* means either:

(A) Any repair, reconstruction, modernization, or improvement of a structure, including a manufactured housing unit, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(*1*) Before the improvement or repair is started; or

(*2*) If the structure has been damaged, and is being restored, before the damage occurred; or

(B) Any repair, reconstruction, modernization, or improvement of a structure, including a manufactured

housing unit, that results in an increase of more than twenty percent in the number of dwelling units in a residential project or in the average peak number of customers and employees likely to be on-site at any one time for a commercial or industrial project.

(ii) *Substantial improvement* may not be defined to include either:

(A) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions, or

(B) Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places.

(iii) Structural repairs, reconstruction, or improvements not meeting this definition are considered ''minor improvements''.

(13) *Wetlands* means those areas that are inundated or saturated by surface or ground water with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetland areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid fill roadbeds and activities such as mineral extraction and navigation improvements. This definition includes both wetlands subject to and those not subject to Section 404 of the Clean Water Act as well as constructed wetlands.

■ 8. Amend § 55.3 by:

■ a. Redesignating paragraphs (a) through (d) as paragraphs (b) through (e), respectively;

■ b. Add a new paragraph (a);

■ c. Revising newly redesignated paragraph (c)(1);

■ d. Removing the word ''technical'' from newly redesignated paragraph (c)(3);

■ e. Revising newly redesignated paragraphs (c)(4), (d), and (e); and

■ f. Adding paragraph (f).

The revisions and additions read as follows:

§ 55.3 Assignment of responsibilities.

(a) *General.* The implementation of Executive Orders 11988 and 11990 under this part shall be conducted by HUD for Department-administered programs subject to environmental review under 24 CFR part 50 and by authorized responsible entities that are responsible for environmental review under 24 CFR part 58.

* * * * *

(c) * * *

(1) Ensure compliance with this part for all actions under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain or wetland, including taking full responsibility for all decisions made under their jurisdiction that are made pursuant to § 55.20 for environmental reviews completed pursuant to 24 CFR part 50;

* * * * *

(4) Incorporate in departmental regulations, handbooks, and project and site standards those criteria, standards, and procedures related to compliance with this part.

(d) *Responsible entity Certifying Officer.* Certifying Officers of responsible entities administering or reviewing activities subject to 24 CFR part 58 shall comply with this part in carrying out HUD-assisted programs. Certifying Officers shall monitor approved actions and ensure that any prescribed mitigation is implemented.

(e) *Grantees and applicants.* Grantees and Applicants that are not acting as responsible entities shall:

(1) Supply HUD (or the responsible entity authorized by 24 CFR part 58) with all available, relevant information necessary for HUD (or the responsible entity) to perform the compliance required by this part, including environmental review record documentation described in 24 CFR 58.38, as applicable;

(2) Implement mitigating measures required by HUD (or the responsible entity authorized by 24 CFR part 58) under this part or select alternate eligible property; and

(3) Monitor approved actions and ensure that any prescribed mitigation is implemented.

(f) *Third party providers.* Consultants and other parties to the environmental review process may prepare maps, studies (*e.g.,* hydraulic and hydrologic studies), and reports to support compliance with this part, including identification of floodplains and wetlands and development of alternatives or minimization measures. The following responsibilities, however, may not be delegated to the third-party provider:

(1) Receipt of public or agency comments;

(2) Selection or rejection of alternatives analyzed in Step 3 of the 8-step decision making process in § 55.20;

(3) Selection or rejection of minimization measures analyzed in Step 5 of the 8-step decision making process in § 55.20;

(4) Determination whether avoidance of floodplain or wetland impacts, according to the purpose of Executive Orders 11988 and 11990, is or is not practicable.

■ 9. Add §§ 55.4 through 55.6 to subpart A to read as follows:

Sec.

* * * * *

55.4 Notification of floodplain hazard.
55.5 Flood insurance.
55.6 Complying with this part.

§ 55.4 Notification of floodplain hazard.

(a) *Notification for property owners, buyers, and developers.* For actions in the FFRMS floodplain (as defined in § 55.7), HUD (or HUD's designee) or the responsible entity must ensure that any party participating in the transaction is notified that the property is in the FFRMS floodplain and whether flood insurance is required or available in this location. Notification shall also include a description of the approximate elevation of the FFRMS floodplain, proximity to flood-related infrastructure impacting the site including dams and levees, the location of ingress and egress or evacuation routes relative to the FFRMS floodplain, disclosure of information on flood insurance claims filed on the property to the extent available from FEMA, and other relevant information such as available emergency notification resources.

(b) *Renter notification.* For HUD-assisted, HUD-acquired, and HUD-insured rental properties within the FFRMS floodplain, new and renewal leases must include acknowledgements signed by residents indicating that they have been advised that the property is in a floodplain and flood insurance is available for their personal property. Notification shall also include the location of ingress and egress routes relative to the FFRMS floodplain, available emergency notification resources, and the property's emergency procedures for residents in the event of flooding.

(c) *Conveyance restrictions for the disposition of multifamily real property.* (1) In the disposition (including leasing) of multifamily properties acquired by HUD that are located in the FFRMS floodplain, the documents used for the conveyance must:

(i) Refer to those uses that are restricted under identified Federal, State, or local floodplain regulations; and

(ii) Include any land use restrictions limiting the use of the property by a

grantee or purchaser and any successors under State or local laws.

(2)(i) For disposition of multifamily properties acquired by HUD that are located in the FFRMS floodplain and contain critical actions, HUD shall, as a condition of approval of the disposition, require by covenant or comparable restriction on the property's use that the property owner and successive owners provide written notification to each current and prospective tenant concerning:

(A) The hazards to life and to property for those persons who reside or work in a structure located within the FFRMS floodplain, and

(B) The availability of flood insurance on the contents of their dwelling unit or business.

(ii) The notice described in paragraph (c)(2)(i) of this section shall also be posted in the building so that it will be legible at all times and easily visible to all persons entering or using the building.

§ 55.5 Flood insurance.

(a)(1) As required by section 102(a) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a), when HUD financial assistance (including mortgage insurance) is proposed for acquisition or construction purposes in any special flood hazard area (as designated by the Federal Emergency Management Agency (FEMA) on an effective Flood Insurance Rate Map (FIRM) or Flood Insurance Study (FIS)), structures for which HUD financial assistance is provided must be covered by flood insurance in an amount at least equal to the project cost less estimated land cost, the outstanding principal balance of any HUD-assisted or HUD-insured loan, or the maximum limit of coverage available under the National Flood Insurance Program, whichever is least. Under section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), such proposed assistance in any special flood hazard area shall not be approved in communities identified by FEMA as eligible for flood insurance but which are not participating in the National Flood Insurance Program. This prohibition only applies to proposed HUD financial assistance in a FEMA-designated special flood hazard area one year after the community has been formally notified by FEMA of the designation of the affected area. This requirement is not applicable to HUD financial assistance in the form of formula grants to States, including financial assistance under the State-administered CDBG Program (24 CFR part 570, subpart I), Emergency Solutions Grant amounts allocated to States (24 CFR part 576), and HOME funds provided to a State under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701–12839). HUD strongly encourages that flood insurance be obtained and maintained for all HUD-assisted structures in the FFRMS floodplain, sites that have previously flooded, or sites in close proximity to a floodplain.

(2) Under section 582 of the National Flood Insurance Reform Act of 1994 (42 U.S.C. 5154a), HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration of damage to any personal, residential, or commercial property if:

(i) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(ii) The person failed to obtain and maintain the flood insurance.

(b) HUD or the responsible entity may impose flood insurance requirements that exceed the minimums established by the Flood Disaster Protection Act of 1973 or by Tribal, State, or local requirements when needed to minimize financial risk from flood hazards. HUD and responsible entities have discretion to require that flood insurance be maintained for structures outside of the FEMA-mapped floodplain but within the FFRMS floodplain and/or that structures be insured up to the full replacement cost of the structure when needed to minimize financial risk from flood hazards. Nothing in this part limits additional flood insurance requirements that may be imposed by a mortgagee participating in a HUD assistance or mortgage insurance or guarantee program.

§ 55.6 Complying with this part.

(a) *Process.* The process to comply with this part is as follows:

(1) HUD or the responsible entity shall determine whether compliance with this part is required. Refer to § 55.12 for a list of activities that do not require further compliance with this part beyond the provisions of paragraph (c) of this section.

(2) HUD or the responsible entity shall refer to § 55.8 to determine whether the proposed action is eligible for HUD assistance or if it must be rejected as proposed.

(3) If the project requires compliance under this part and is not prohibited by § 55.8, HUD or the responsible entity shall refer to § 55.13 to determine whether the 8-step decision making process in § 55.20 is required.

(4) HUD or the responsible entity shall refer to § 55.10 to determine whether the 8-step decision making process in § 55.20 for wetland protection is required or whether best practices to minimize potential indirect impacts to wetlands should be pursued.

(5) HUD or the responsible entity shall determine whether an exception in § 55.14 applies that would allow them to complete an abbreviated decision-making process under § 55.20.

(6) Where the decision-making process is required, HUD or the responsible entity shall follow the decision-making process described in § 55.20, eliminating any steps as permitted under § 55.14.

(b) *Decision making.* HUD or the responsible entity shall determine whether to approve the action as proposed, approve the action with modifications or at an alternative site, or reject the proposed action, based on its analysis of the proposed risks and impacts. HUD or the responsible entity has discretion to reject any project where it determines that the level of flood hazard is incompatible with the proposed use of the site or that the extent of impacts to wetlands or to the beneficial function of floodplains is not acceptable, regardless of whether it would otherwise be acceptable under this part.

(c) *Other requirements.* Refer to §§ 55.4 and 55.5 to determine whether the proposed action may require notifications and/or flood insurance. Actions that do not require full compliance under this part may still trigger notification and flood insurance requirements.

(d) *Documentation.* HUD or the responsible entity shall require that all of the analysis required under this part, including applicable exceptions and all required steps described in § 55.20, be documented in the environmental review record.

Subpart B—Application of Executive Orders on Floodplain Management and Protection of Wetlands

■ 10. Add §§ 55.7 through 55.9 to read as follows:

Sec.

* * * * *

55.7 Identifying the FFRMS floodplain.

55.8 Limitations on HUD assistance in floodplains.

55.9 Identifying wetlands.

* * * * *

§ 55.7 Identifying the FFRMS floodplain.

(a) HUD or the responsible entity shall determine all compliance with the

floodplain review requirements of this part based on the FFRMS floodplain.

(b) For a non-critical action, HUD or the responsible entity shall define the FFRMS floodplain using the following process:

(1) The climate-informed science approach (CISA) to identify the area having an elevated flood risk during the anticipated life of the project if data is available and actionable. Data is available and actionable for a particular project where:

(i) The data can be accessed via a tool, resource, or other process developed or identified by a Federal agency or agencies to define the floodplain using the CISA, and

(ii) HUD has adopted the particular tool, resource, or other process through a **Federal Register** publication for comment.

(2) If CISA data is not available or actionable but FEMA has defined the 0.2-percent-annual-chance floodplain, those areas that FEMA has designated as within the 0.2-percent-annual-chance floodplain; or

(3) If neither CISA data nor FEMA-mapped 0.2-percent-annual-chance floodplain data is available, those areas that result from adding an additional two feet to the base flood elevation as established by the effective FIRM or FIS or—if available—FEMA-provided interim or preliminary maps or studies or advisory base flood elevations.

(4) FFRMS floodplain determinations under paragraphs (b)(2) and (3) of this section shall be made using the information provided in the latest FEMA resources. Elevation determinations based on CISA data or an interim or preliminary FEMA map cannot be used as a basis for a lower elevation than the base flood elevation on the current FIRM or FIS.

(c) For a critical action, the FFRMS floodplain is either:

(1) Those areas designated as having an elevated flood risk identified by the climate-informed science approach (CISA)—as determined based on the criticality of the action—during the anticipated life of the project if the data is available and actionable, as available and actionable is described in paragraph (b)(1) of this section; or

(2) If CISA data as described above is not available or actionable, an area either within the 0.2-percent-annual-chance floodplain or within the area that results from adding an additional three feet to the base flood elevation. The larger floodplain and higher elevation must be applied where the 0.2-percent-annual-chance floodplain is mapped. If FEMA resources do not map the 0.2-percent-annual-chance floodplain, the FFRMS floodplain is the area that results from adding an additional three feet to the base flood elevation based on best available information.

(3) FFRMS floodplain determinations under paragraph (c)(2) of this section shall be made using the information provided in the latest FEMA resources.

(d) If CISA data is not available or actionable and if FEMA FIRMS, FIS, preliminary maps or advisory base flood elevations are unavailable or insufficiently detailed to determine base flood elevation, other Federal, Tribal, State, or local data shall be used as ''best available information.'' If best available information is based only on past flooding and does not consider future flood risk:

(1) For non-critical actions, the FFRMS floodplain includes those areas that result from adding an additional two feet to the base flood elevation based on best available information.

(2) For critical actions, the FFRMS floodplain includes those areas that result from adding an additional three feet to the base flood elevation based on best available information.

(e) When preparing an Environmental Impact Statement (EIS), an analysis of the best available, actionable climate science, where available and actionable data exists or can be generated in accordance with 42 U.S.C. 4336(b)(3), as determined by HUD or the responsible entity, must be performed to define the FFRMS floodplain. These sources may supplement the FIRM or Advisory Base Flood Elevation (ABFE) in order to better minimize impacts to projects or to elevate or floodproof structures above the risk adjusted floodplain. These sources may not be used as a basis for a lower elevation than otherwise required under this section.

(f)(1) Regardless of whether HUD has adopted a particular tool, resource, or other process to define the floodplain using CISA, as described in paragraphs (b)(1) and (c)(1) of this section, HUD or a responsible entity may voluntarily define the FFRMS floodplain utilizing CISA when:

(i) A State, Tribal, or local government formally adopts, through code or other formal adoption measures, a tool, resource, or other written standard developed or utilized by the State, Tribal, or local government that provides data or other methods to identify the FFRMS floodplain using CISA for a particular project; or

(ii) HUD publishes guidance identifying a particular tool, resource, or other process that may be used to define the floodplain using CISA, and the tool, resource, or other process identified in the HUD-published guidance contains the necessary data or information to define the floodplain for the project being considered.

(2)(i) The approach in this paragraph (f) may not be used as a basis for a lower elevation than the lowest of:

(A) The 0.2-percent-annual-chance floodplain elevation;

(B) The elevation that results from adding an additional two feet to the base flood elevation; or

(C) The elevation required by paragraph (b) or (c) of this section, if CISA data is available and actionable under paragraph (b)(1) or (c)(1).

(ii) Where HUD or a responsible entity voluntarily defines the FFRMS floodplain using the options in paragraph (f)(1)(i) or (ii) of this section, the criticality of the action must be considered when determining the appropriate elevation of the FFRMS floodplain.

§ 55.8 Limitations on HUD assistance in floodplains.

(a) HUD financial assistance (including mortgage insurance) may not be approved with respect to:

(1) Any action located in a floodway unless one of the following applies:

(i) An exception listed in § 55.12 applies; or

(ii) A permanent covenant or comparable restriction will preserve all onsite FFRMS floodplain and/or wetland areas from future development or expansion of existing uses in the floodplain and/or wetland areas. Any rehabilitation, including reconstruction in the case of properties affected by Presidentially declared disasters, that does not expand the footprint of the buildings or the number of units on the site would be allowed within the FFRMS floodplain outside of the floodway. No buildings or improvements may modify or occupy the floodway, with the exception of:

(A) Functionally dependent uses (as defined in § 55.2(b)(7)) and utility lines;

(B) De minimis improvements, including minimal ground disturbance or placement of impervious surface area to ensure accessibility where this is permitted by local ordinances and does not increase flood risk to the property; or

(C) Buildings and improvements that will be removed as part of the proposed action.

(2) Any critical action located in a floodway, other than a functionally dependent use where any existing or new structure has been or will be elevated or floodproofed to the FFRMS elevation for critical actions; or any critical action in a coastal high hazard

area or LiMWA, other than a functionally dependent use where any existing or new structure has been or will be elevated and constructed in accordance with current FEMA V-zone construction standards at 44 CFR 60.3(e); provided that, for a critical action that is insurance of a mortgage on a property containing a floodway with no structures or improvements in the floodway, paragraph (a)(1) of this section applies; or

(3) Any noncritical action located in a coastal high hazard area, or LiMWA, unless the action is a functionally dependent use, is limited to existing structures or improvements, or is reconstruction following destruction caused by a Presidentially declared disaster. If the action is not a functionally dependent use, the action must be designed for location in a coastal high hazard area. An action will be considered designed for a coastal high hazard area if:

(i) In the case of reconstruction following destruction caused by a disaster, or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

(ii) In the case of existing construction (including any minor improvements that are not substantial improvements):

(A) The work met FEMA elevation and construction standards for a coastal high hazard area (or if such a zone or such standards were not designated, the 1-percent-annual-chance floodplain) applicable at the time the original improvements were constructed; or

(B) If the original improvements were constructed before FEMA standards for the 1-percent-annual-chance floodplain became effective or before FEMA designated the location of the action as within the 1-percent-annual-chance floodplain, the work would meet at least the earliest FEMA standards for construction in the 1-percent-annual-chance floodplain.

(b) All determinations made pursuant to this section shall be based on the effective FIRM or FIS unless FEMA has provided more current information. When FEMA provides interim flood hazard data, such as ABFE or preliminary maps and studies, HUD or the responsible entity shall use the latest of these sources. However, a base flood elevation from an interim or preliminary source cannot be used if it is lower than the base flood elevation on the current FIRM and FIS.

(c) Where HUD assistance is proposed for actions subject to § 55.20 on structures designated by FEMA as Severe Repetitive Loss (SRL) properties, and FEMA has approved measures that if implemented would qualify the property for a status of ''Mitigated'' as to the SRL list, HUD or the responsible entity will ensure that FEMA-identified mitigation measures are identified and implemented as part of the decision making process under § 55.20(e).

§ 55.9 Identifying wetlands.

The following process shall be followed in making the wetlands determination:

(a) HUD or the responsible entity shall determine whether the action involves new construction that is located in or impacts a wetland.

(b) As primary screening, HUD or the responsible entity shall verify whether the project area is located in proximity to wetlands identified on the National Wetlands Inventory (NWI) and assess the site for visual indication of the presence of wetlands such as hydrology (water), hydric soils, or wetland vegetation. Where the primary screening is inconclusive, potential wetlands should be further evaluated using one or more of the following methods:

(1) Consultation with the Department of the Interior, U.S. Fish and Wildlife Service (USFWS), for information concerning the location, boundaries, scale, and classification of wetlands within the area.

(2) Reference to the Department of Agriculture, Natural Resources Conservation Service (NRCS) National Soil Survey (NSS), and any Tribal, State, or local information concerning the location, boundaries, scale, and classification of wetlands within the action area and further site study by the environmental review preparer with reference to Federal guidance on field identification of the biological (rather than jurisdictional) characteristics of wetlands.

(3) Evaluation by a qualified wetlands scientist to delineate the wetland boundaries on site.

■ 11. Revise § 55.10 to read as follows:

§ 55.10 Limitations on HUD assistance in wetlands.

(a) When the proposed project includes new construction activities (including grading, clearing, draining, filling, diking, impounding, and related activities for any structure or facilities including the siting of new manufactured housing units) that will have a direct impact to onsite wetlands identified by the process described in § 55.9, compliance with this part requires completion of the 8-step decision making process in § 55.20 to address wetland impacts.

(b) When the proposed project may indirectly affect wetlands by modifying the flow of stormwater, releasing pollutants, or otherwise changing conditions that contribute to wetlands viability, the significance of these impacts must be evaluated and the impacts minimized through best management practices. If the project site includes wetlands that will not be impacted by new construction, HUD strongly encourages measures to preserve such wetlands from future impacts, including by obtaining a restrictive covenant, conservation easement, or other mechanism.

(c) When the proposed project may indirectly affect off-site wetlands, impacts should be minimized to the extent practicable. While this part does not require further decision making to address these effects under the authority of Executive Order 11990, measures to address offsite wetlands impacts may be necessary to comply with related laws and authorities including the Endangered Species Act or to address significant impacts under the National Environmental Policy Act.

§ 55.11 [Removed and Reserved]

■ 12. Remove and reserve § 55.11.

■ 13. Revise § 55.12 to read as follows:

§ 55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

With the exception of the flood insurance requirements in § 55.5, this part shall not apply to the following categories of proposed HUD actions:

(a) HUD-assisted activities described in 24 CFR 58.34 and 58.35(b);

(b) HUD-assisted activities described in 24 CFR 50.19, except as otherwise indicated in § 50.19;

(c) The approval of financial assistance for restoring and preserving the natural and beneficial functions and values of floodplains and wetlands, including through acquisition of such floodplain and wetland property, where a permanent covenant or comparable restriction is placed on the property's continued use for flood control, wetland protection, open space, or park land, but only if:

(1) The property is cleared of all existing buildings and walled structures; and

(2) The property is cleared of related improvements except those which:

(i) Are directly related to flood control, wetland protection, open space, or park land (including playgrounds and recreation areas);

(ii) Do not modify existing wetland areas or involve fill, paving, or other

ground disturbance beyond minimal trails or paths; and

(iii) Are designed to be compatible with the beneficial floodplain or wetland function of the property.

(d) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance;

(e) Policy-level actions described at 24 CFR 50.16 that do not involve site-based decisions;

(f) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain or wetland;

(g) HUD's or the responsible entity's approval of a project site, an incidental portion of which is situated in the FFRMS floodplain (not including the floodway, LiMWA, or coastal high hazard area), but only if:

(1) The proposed project site does not include any existing or proposed buildings or improvements that modify or occupy the FFRMS floodplain except de minimis improvements such as recreation areas and trails; and

(2) The proposed project will not result in any new construction in or modifications of a wetland.

(h) Issuance or use of Housing Vouchers 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);

(i) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities.

■ 14. Add §§ 55.13 and 55.14 to read as follows:

§ 55.13 Inapplicability of 8-step decision making process to certain categories of proposed actions.

The decision-making process in § 55.20 shall not apply to the following categories of proposed actions:

(a) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging, or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.,* not suspended from program eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway, coastal high hazard area, or LiMWA;

(b) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for ''substantial improvement'' under § 55.2(b)(12);

(c) HUD or a recipient's actions involving the disposition of individual HUD or recipient held one- to four-family properties;

(d) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573), where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance;

(e) The approval of financial assistance to lease an existing structure and/or units within an existing structure located within the floodplain, but only if;

(1) The structure is located outside the floodway or coastal high hazard area, and is in a community that is in the Regular Program of the NFIP and in good standing (*i.e.,* not suspended from program eligibility or placed on probation under 44 CFR 59.24);

(2) The project is not a critical action; and

(3) The entire structure is or will be fully insured or insured to the maximum extent available under the NFIP for at least the term of the lease.

(f) Special projects for the purpose of improving the energy or water efficiency of utilities or installing renewable energy that involve the repair, rehabilitation, modernization, weatherization, or improvement of existing structures or infrastructure, do not meet the thresholds for ''substantial improvement'' under § 55.2(b)(12), and do not include the installation of equipment below the FFRMS floodplain elevation; and

§ 55.14 Modified 5-step decision making process for certain categories of proposed actions.

The decision making steps in § 55.20(b), (c), and (g) (Steps 2, 3, and 7) do not apply to the following categories of proposed actions:

(a) HUD's or the recipient's actions involving the disposition of acquired multifamily housing projects or ''bulk sales'' of HUD-acquired (or under part 58 of recipients') one- to four-family properties in communities that are in the Regular Program of the NFIP and in good standing (*i.e.,* not suspended from program eligibility or placed on probation under 44 CFR 59.24). For programs subject to part 58, this paragraph applies only to recipients' disposition activities that are subject to review under part 58.

(b) HUD's actions under the National Housing Act (12 U.S.C. 1701 *et seq.*) for the purchase or refinancing of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities, and intermediate care facilities, in communities that are in good standing under the NFIP.

(c) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities, intermediate care facilities, and one- to four-family properties, in communities that are in the Regular Program of the NFIP and are in good standing (*i.e.,* not suspended from program eligibility or placed on probation under 44 CFR 59.24), provided that the number of units is not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, the action does not meet the thresholds for ''substantial improvement'' under § 55.2(b)(12), and the footprint of the structure and paved areas is not increased by more than 20 percent.

(d) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing nonresidential buildings and structures, in communities that are in the Regular Program of the NFIP and are in good standing (*i.e.,* not suspended from program eligibility or placed on probation under 44 CFR 59.24), provided that the action does not meet the thresholds for ''substantial improvement'' under § 55.2(b)(12) and the footprint of the structure and paved areas is not increased by more than 20 percent.

(e) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, or replacement of existing nonstructural improvements including streets, curbs, and gutters, where any increase of the total impervious surface area of the facility is de minimis. This provision does not include critical actions, levee systems, chemical storage facilities (including any tanks), wastewater facilities, or sewer lagoons.

Subpart C—Procedures for Making Determinations on Floodplain Management and Protection of Wetlands

■ 15. Add § 55.16 to read as follows:

§ 55.16 Applicability of subpart C decision making process.

Table 1 to this section indicates the applicability, by location and type of action, of the decision making process for implementing Executive Order 11988 and Executive Order 11990 under this subpart.

TABLE 1 TO § 55.16

Type of proposed action (new reviewable action or an amendment) [1]	Floodways	Coastal high hazard and LiMWA areas	Wetlands or FFRMS floodplain outside coastal high hazard area, LiMWA area, and floodways
Critical actions as defined in § 55.2(b)(3).	Critical actions not allowed unless they meet the requirements for critical actions in § 55.8 and are processed under § 55.20 [2].	Critical actions not allowed unless they meet the requirements for critical actions in § 55.8 and are processed under § 55.20 [2].	Allowed if the proposed critical action is processed under § 55.20.[2]
Noncritical actions not excluded under § 55.12 or § 55.13.	Allowed only if the proposed non-critical action is not prohibited under § 55.8(a)(1) and is processed under § 55.20 [2].	Allowed only if the proposed noncritical action is processed under § 55.20 [2] and is (1) a functionally dependent use, (2) existing construction (including improvements), or (3) reconstruction following destruction caused by a disaster. If the action is not a functionally dependent use, the action must be designed for location in a coastal high hazard area under § 55.8(a)(3).	Allowed if proposed noncritical action is processed under § 55.20.[2]

[1] Under Executive Order 11990, the decision making process in § 55.20 only applies to Federal assistance for new construction in wetlands locations.
[2] Or those paragraphs of § 55.20 that are applicable to an action listed in § 55.14.

■ 16. Amend § 55.20 by:
■ a. Revising the introductory text, paragraph (a), paragraph (b) introductory text, and paragraphs (b)(1) and (2);
■ b. Removing ''HUD'' from the last sentence and adding in its place ''HUD's'' in paragraph (b)(3);
■ c. Adding paragraph (b)(4);
■ d. Revising paragraphs (c) introductory text, (c)(1)(i) and (ii), (c)(2) introductory text, (c)(2)(iii), (c)(3), (d) introductory text, (d)(1), (d)(2) introductory text, (d)(2)(i), (e), (f) introductory text, and (f)(2)(ii);
■ e. Adding paragraph (f)(2)(iii); and
■ f. Revising paragraph (g)(1) introductory text.

The revisions and additions read as follows:

§ 55.20 Decision making process.

Except for actions covered by § 55.14, the decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives when addressing floodplains and wetlands. Third parties may provide analysis and information to support the decision making process; however, final determinations for each step, authorization of public notices, and receipt of public comments, are the responsibility of HUD or the responsible entity. The steps to be followed in the decision making process are as follows:

(a) *Step 1.* Using the processes described in §§ 55.7 and 55.9, determine whether the proposed action is located in the FFRMS floodplain or results in new construction that directly impacts an onsite wetland. If the action does not occur in the FFRMS floodplain or include new construction directly impacting an onsite wetland, then no further compliance with this section is required. Where the proposed action would be located in the FFRMS floodplain and includes new construction directly impacting an onsite wetland, these impacts should be evaluated together in a single 8-step decision making process. In such a case, the wetland will be considered among the primary natural and beneficial functions and values of the floodplain. For purposes of this section, an ''action'' includes areas required for ingress and egress, even if they are not within the site boundary, and other integral components of the proposed action, even if they are not within the site boundary.

(b) *Step 2.* Notify the public and agencies responsible for floodplain management or wetlands protection at the earliest possible time of a proposal to consider an action in an FFRMS floodplain or wetland and involve the affected and interested public and agencies 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 or multilingual, as appropriate, if the affected public has Limited English Proficiency. In addition, all notices must be published in a newspaper of general circulation in the affected community or on an appropriate government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency, 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. The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.

* * * * *

(4) When the proposed activity is located in or affects a community with environmental justice concerns, public comment and decision making under this part shall be coordinated with consultation and decision making under HUD policies implementing 24 CFR 58.5(j) or 50.4(l).

(c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in the FFRMS floodplain or wetland.

(1) * * *

(i) Locations outside and not affecting the FFRMS floodplain or wetland;

(ii) Alternative methods to serve the identical project objective, including but not limited to design alternatives such as repositioning or reconfiguring proposed siting of structures and improvements or incorporating natural systems, ecosystem processes, and nature-based solutions to avoid floodplain and wetland impacts; and

* * * * *

(2) Practicability of alternatives should be addressed in light of the goals identified in the project description related to the following:

* * * * *

(iii) Economic values such as the cost of space, construction, services, relocation, potential property losses from flooding, and cost of flood insurance.

(3) For multifamily and healthcare projects involving HUD mortgage insurance that are initiated by third parties, HUD in its consideration of practicable alternatives is not required to consider alternative sites, but must include consideration of:

(i) A determination to approve the request without modification;

(ii) A determination to approve the request with modification; and

(iii) A determination not to approve the request.

(d) *Step 4.* Identify and evaluate the potential direct and indirect impacts associated with the occupancy or modification of the FFRMS floodplain or the wetland and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action, including impacts related to future climate-related flood levels, sea level rise, and the related increased value of beneficial floodplain and wetland functions.

(1) *Floodplain evaluation.* The floodplain evaluation for the proposed action must evaluate floodplain characteristics (both existing and as proposed for modification by the project) to determine potential adverse impacts to lives, property, and natural and beneficial floodplain values as compared with alternatives identified in Step 3.

(i) Floodplain characteristics include:

(A) Identification of portions of the site that are subject to flood risk, documented through mapping and, as required by § 55.7(e) or commensurate with the scale of the project and available resources as permitted by § 55.7(f), climate-informed analysis of factors including development patterns, streamflow, and hydrologic and hydraulic modeling;

(B) Topographic information that can inform flooding patterns and distance to flood sources, as described in flood mapping, Flood Insurance Studies, and other data sources; and

(C) Public safety communications and data related to flood risk including available information on structures such as dams, levees, or other flood protection infrastructure located in proximity to the site.

(ii) Impacts to lives and property include:

(A) Potential loss of life, injury, or hardship to residents of the subject property during a flood event;

(B) Damage to the subject property during a flood event;

(C) Damage to surrounding properties from increased runoff or reduction in floodplain function during a flood event due to modification of the subject site;

(D) Health impacts due to exposure to toxic substance releases that may be caused or exacerbated by flood events; and

(E) Damage to a community as a result of project failure (*e.g.,* failure of stormwater management infrastructure due to scouring).

(iii) Impacts to natural and beneficial values include changes to:

(A) Water resources such as natural moderation of floods, water quality maintenance, and groundwater recharge;

(B) Living resources such as flora and fauna (if the project requires consultation under 24 CFR 50.4(e) or 58.5(e), consultation with the U.S. Fish and Wildlife Service or National Marine Fisheries Service must include a description of impacts evaluated under this part);

(C) Cultural resources such as archaeological, historic, aesthetic and recreational aspects; and

(D) Agricultural, aquacultural, and forestry resources.

(2) *Wetland evaluation.* In accordance with section 5 of Executive Order 11990, the decision maker shall consider factors relevant to a proposal's effect on the survival and quality of the wetland. Factors that must be evaluated include, but are not limited to:

(i) Public health, safety, and welfare, including water supply, quality, recharge, and discharge; pollution; flood and storm hazards and hazard protection; and sediment and erosion, including the impact of increased quantity or velocity of stormwater runoff on, or to areas outside of, the proposed site;

* * * * *

(e) *Step 5.* Where practicable, design or modify the proposed action to minimize the potential adverse impacts to and from the FFRMS floodplain or wetland and to restore and preserve their natural and beneficial functions and values.

(1) *Elevation.* For actions in the FFRMS floodplain, the required elevation described in this section must be documented on an Elevation Certificate or a Floodproofing Certificate in the Environmental Review Record prior to construction, or by such other means as HUD may from time to time direct, provided that notwithstanding any language to the contrary, the minimum elevation or floodproofing requirement for new construction or substantial improvement actions shall be the elevation of the FFRMS floodplain as defined in this section.

(i) If a residential structure undergoing new construction or substantial improvement is located in the FFRMS floodplain, the lowest floor or FEMA-approved equivalent must be designed using the elevation of the FFRMS floodplain as the baseline standard for elevation, except where higher elevations are required by Tribal, State, or locally adopted code or standards, in which case those higher elevations apply. Where non-elevation standards such as setbacks or other flood risk reduction standards that have been issued to identify, communicate, or reduce the risks and costs of floods are required by Tribal, State, or locally adopted code or standards, those standards shall apply in addition to the FFRMS baseline elevation standard.

(ii) New construction and substantial improvement of residential structures that have no dwelling units below the FFRMS floodplain and that are not critical actions as defined at § 55.2(b)(3), or of non-residential structures, shall be designed either:

(A) With the lowest floor, including basement, elevated to or above the elevation of the FFRMS floodplain; or

(B) With the structure floodproofed at least up to the elevation of the FFRMS floodplain. Floodproofing standards are as stated in FEMA's regulations at 44 CFR 60.3(c)(3)(ii) and (c)(4)(i), or such other regulatory standard as FEMA may issue, and applicable guidance, except that where the standard refers to base flood level, floodproofing is required at or above the FFRMS floodplain, as defined in this part.

(iii) The term ''lowest floor'' must be applied consistent with FEMA regulations in 44 CFR 59.1 and FEMA's Elevation Certificate guidance or other applicable current FEMA guidance.

(2) *Minimization.* Potential harm to or within the floodplain and/or wetland must be reduced to the smallest possible amount. E.O. 11988's requirement to minimize potential harm applies to the

investment at risk or the flood loss potential of the action itself, the impact the action may have on others, and the impact the action may have on floodplain and wetland values. The record must include a discussion of all minimization techniques that will be incorporated into project designs as well as those that were considered but not approved. Minimization techniques for floodplain and wetlands purposes include, but are not limited to:

(i) *Stormwater management and green infrastructure:* The use of permeable surfaces; natural landscape enhancements that maintain or restore natural hydrology through infiltration, native plant species, bioswales, rain gardens, or evapotranspiration; stormwater capture and reuse; green or vegetative roofs with drainage provisions; WaterSense products; rain barrels and grey water diversion systems; protective gates or angled safety grates for culverts and stormwater drains; and other low impact development and green infrastructure strategies, technologies, and techniques. Where possible, use natural systems, ecosystem processes, and nature-based approaches when developing alternatives for consideration.

(ii) *Adjusting project footprint:* Evaluate options to relocate or redesign structures, amenities, and infrastructure to minimize the amount of impermeable surfaces and other impacts in the FFRMS floodplain or wetland. This may include changes such as designing structures to be taller and narrower or avoiding tree clearing to reduce potential erosion from flooding.

(iii) *Resilient building standards:* Consider implementing resilient building codes or standards to ensure a reliable and consistent level of safety.

(iv) *Severe Repetitive Loss (SRL) mitigation:* Identify and incorporate FEMA identified SRL mitigation as outlined in § 55.8(c), if applicable.

(3) *Restoration and preservation.* Restore means to reestablish a setting or environment in which the natural and beneficial values of floodplains and wetlands could again function. Where floodplain and wetland values have been degraded by past actions, restoration is informed by evaluation of the impacts of such actions on beneficial values of the floodplain or wetland and identification, evaluation, and implementation of practicable measures to restore the values diminished or lost. Preserve means to prevent modification to the natural floodplain or wetland environment or to maintain it as closely as possible to its natural state. If an action will result in harm to or within the floodplain or wetland, HUD or the responsible entity must ensure that the action is designed or modified to assure that it will be carried out in a manner which preserves as much of the natural and beneficial floodplain and values as is possible. Restoration and preservation techniques for floodplain and wetlands purposes include, but are not limited to:

(i) Natural Resource Conservation Service or other conservation easements;

(ii) Appropriate and practicable compensatory mitigation, which is required for unavoidable adverse impacts to more than one acre of wetlands. Compensatory mitigation includes but is not limited to: permittee-responsible mitigation, mitigation banking, in-lieu fee mitigation, the use of preservation easements or protective covenants, and any form of mitigation promoted by State or Federal agencies. The use of compensatory mitigation may not substitute for the requirement to avoid and minimize impacts to the maximum extent practicable.

(4) *Planning for residents' and occupants' safety.* (i) For multifamily residential properties and residential healthcare facilities, an evacuation plan must be developed that includes safe egress route(s) out of the FFRMS floodplain, plans for evacuating residents with special needs, and clear communication of the evacuation plan and safety resources for residents.

(ii) For all healthcare facilities, evacuation route(s) out of the FFRMS floodplain must be identified and clearly communicated to all residents and employees. Such actions must include a plan for emergency evacuation and relocation to a facility of like capacity that is equipped to provide required critical needs-related care and services at a level similar to the originating facility.

(iii) All critical actions in the FFRMS floodplain must operate and maintain an early warning system that serves all facility occupants.

(f) *Step 6.* HUD or the responsible entity shall consider the totality of the previous steps and the criteria in this section to make a decision as to whether to approve, approve with modifications, or reject the proposed action. Adverse impacts to floodplains and wetlands must be avoided if there is a practicable alternative. This analysis must consider:

* * * * *

(2) * * *

(ii) A reevaluation of alternatives under this step should include a discussion of economic costs. For floodplains, the cost estimates should include savings or the costs of flood insurance, where applicable; flood proofing; replacement of services or functions of critical actions that might be lost; and elevation to at least the elevation of the FFRMS floodplain, as appropriate based on the applicable source under § 55.7. For wetlands, the cost estimates should include the cost of filling the wetlands and mitigation.

(iii) If the proposed activity is located in or affects a community with environmental justice concerns, the reevaluation must address public input provided during environmental justice outreach, if conducted, and must document the ways in which the activity, in light of information analyzed, mitigation measures applied, and alternatives selected, serves to reduce any historical environmental disparities related to flood risk or wetlands impacts in the community.

(g) * * *

(1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the FFRMS floodplain or the wetland, publish a final notice that includes:

* * * * *

■ 17. Revise § 55.21 to read as follows:

§ 55.21 Alternate processing for existing nonconforming sites.

Notwithstanding the limitations on HUD assistance defined in § 55.8, in exceptional circumstances, the Assistant Secretary for Community Planning and Development may approve HUD assistance or insurance to improve an existing property with ongoing HUD assistance or mortgage insurance if the following conditions are satisfied:

(a) HUD completes an environmental review pursuant to 24 CFR part 50, including the 8-step decision making process pursuant to § 55.20, that:

(1) Documents that it is not practicable to transfer the HUD assistance to a site with lower flood risk under existing program rules, financial limitations, and site availability; and

(2) Mandates measures to ensure that the elevated flood risk is the only environmental hazard or impact that does not comply or that requires mitigation to comply, with HUD's environmental requirements at 24 CFR parts 50, 51, 55, and 58; and

(b) The proposed project incorporates all practicable measures to minimize flood risk, preserve the function of the floodplain and any impacted wetlands as described in § 55.20(e), and increase the overall resilience of the site, as approved and/or required by HUD. At minimum, these measures must include:

(1) Removal of all residential units and critical action structures from the floodway;

(2) Identification of evacuation routes out of the FFRMS floodplain;

(3) A No-Rise Certification for any new improvements in the floodway; and

(4) Elevation (or floodproofing pursuant to § 55.20(e)(1)) of existing structures within the FFRMS Floodplain, where practicable.

§ § 55.22, 55.24, and 55.25 [Removed and Reserved]

■ 18. Remove and reserve §§ 55.22, 55.24, and 55.25.

■ 19. Amend § 55.26 by revising the section heading, the introductory text, and paragraphs (b)(1) and (c) to read as follows:

§ 55.26 Adoption of another agency's review under the Executive orders.

If a proposed action covered under this part is already covered in a prior review performed under Executive Order 11988 or Executive Order 11990 by another agency, including HUD or a different responsible entity, that review may be adopted by HUD or by a responsible entity authorized under 24 CFR part 58 without further public notice, provided that:

* * * * *

(b) * * *

(1) The action currently proposed has not substantially changed in project description, scope, and magnitude from the action previously reviewed by the other agency; and

* * * * *

(c) HUD assistance must be conditioned on mitigation measures prescribed in the previous review.

§ § 55.27 and 55.28 [Removed]

■ 20. Remove §§ 55.27 and 55.28.

■ 21. Add subpart D, consisting of § 55.30, to read as follows:

Subpart D—Severability

§ 55.30 Severability.

Any provision of this part held to be invalid or unenforceable as applied to any action should be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is that the provision of this part is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder of this part and shall not affect the remainder thereof.

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL REVIEW RESPONSIBILITIES

■ 22. The authority citation for part 58 is revised to read as follows:

Authority: 12 U.S.C. 1707 note, 1715z–13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321–4336e, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105–276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

■ 23. Amend § 58.5 by revising paragraph (b)(1) to read as follows:

§ 58.5 Related Federal laws and authorities.

* * * * *

(b) * * *

(1) Executive Order 11988, Floodplain Management, as amended by Executive Order 13690, February 4, 2015 (3 CFR, 2016 Comp., p. 268), as implemented in HUD regulations at 24 CFR part 55, particularly section 2(a) of Executive Order 11988, as amended.

* * * * *

§ 58.43 [Amended]

■ 24. Amend § 58.43 in paragraph (a) by:

■ a. Removing ''tribal, local, State and Federal agencies;'' and add in its place ''Tribal, Federal, State, and local agencies''; and

■ b. Adding ''or on an appropriate Government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency'' after ''affected community'' in the third sentence.

■ 25. Revise and republish § 58.45 to read as follows:

§ 58.45 Public comment periods.

Required notices must afford the public the following minimum comment periods, counted in accordance with § 58.21:

(a) Notice of Finding of No Significant Impact (FONSI).	15 days when published in a general circulation newspaper or on a Government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency or, if no publication, 18 days when mailing and posting.
(b) Notice of Intent to Request Release of Funds (NOI–RROF).	7 days when published in a general circulation newspaper or on a Government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency or, if no publication, 10 days when mailing and posting.
(c) Concurrent or combined notices	15 days when published in a general circulation newspaper or on a Government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency or, if no publication, 18 days when mailing and posting.

§ 58.59 [Amended]

■ 26. Amend § 58.59 in paragraph (b) introductory text by adding ''or on an appropriate government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency'' after ''news media''.

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 27. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z-21; 42 U.S.C. 3535(d).

■ 28. Amend § 200.926d by

■ a. Revising paragraphs (c)(4)(i) through (iii);

■ b. Removing paragraph (c)(4)(iv); and

■ c. Redesignating paragraphs (c)(4)(v) and (vi) as paragraphs (c)(4)(iv) and (v), respectively.

The revisions read as follows:

§ 200.926d Construction requirements.

* * * * *

(c) * * *

(4) * * *

(i) *Residential structures located in Special Flood Hazard Areas.* The elevation of the lowest floor (including basements and other permanent enclosures) shall be at least two feet above the base flood elevation (see 24 CFR 55.8(b) for appropriate data sources).

(ii) *Residential structures located in FEMA-designated ''coastal high hazard areas.''* Where FEMA has determined the base flood level without establishing stillwater elevations, the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) and its horizontal supports shall be at least two feet above the base flood elevation.

(iii) *New construction.* (A) In all cases in which a Direct Endorsement (DE) mortgagee or a Lender Insurance (LI) mortgagee seeks to insure a mortgage on a one- to four-family dwelling that is newly constructed (including a newly

erected manufactured home) that was processed by the DE or LI mortgagee, the DE or LI mortgagee must determine whether the property improvements (dwelling and related structures/equipment essential to the value of the property and subject to flood damage) are located on a site that is within a Special Flood Hazard Area, as designated on maps of the Federal Emergency Management Agency. If so, the DE mortgagee, before submitting the application for insurance to HUD, or the LI mortgagee, before submitting all the required data regarding the mortgage to HUD, must obtain:

(*1*) A final Letter of Map Amendment (LOMA);

(*2*) A final Letter of Map Revision (LOMR); or

(*3*) A signed Elevation Certificate documenting that the lowest floor (including basements and other permanent enclosures) of the property improvements is at least two feet above the base flood elevation as determined by FEMA's best available information (or documenting that the lowest floor meets HUD's elevation standard for newly erected manufactured housing in 24 CFR 203.43f or 24 CFR part 3285, as applicable).

(B) Under the DE program, these mortgages are not eligible for insurance unless the DE mortgagee submits the LOMA, LOMR, or Elevation Certificate to HUD with the mortgagee's request for endorsement.

* * * * *

Dated: March 20, 2024.

Marcia L. Fudge,

Secretary.

[FR Doc. 2024–06246 Filed 4–22–24; 8:45 am]

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