

Office of the Secretary, HUD

§ 55.1

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 52.11 What are the Secretary's obligations in interstate situations?

(a) The Secretary is responsible for—

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 52.10 of this part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 52.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 52.12 [Reserved]

PART 55—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

Subpart A—General

Sec.

55.1 Purpose.

55.2 Terminology.

55.3 Assignment of responsibilities.

55.4 Notification of floodplain hazard.

55.5 Flood insurance.

55.6 Complying with this part.

Subpart B—Application of Executive Orders on Floodplain Management and Protection of Wetlands

55.7 Identifying the FFRMS floodplain.

55.8 Limitations on HUD assistance in floodplains.

55.9 Identifying wetlands.

55.10 Limitations on HUD assistance in wetlands.

55.11 [Reserved]

55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

55.13 Inapplicability of 8-step decision making process to certain categories of proposed actions.

55.14 Modified 5-step decision making process for certain categories of proposed actions.

Subpart C—Procedures for Making Determinations on Floodplain Management and Protection of Wetlands

55.16 Applicability of subpart C decision making process.

55.20 Decision making process.

55.21 Alternate processing for existing non-conforming sites.

55.22–55.25 [Reserved]

55.26 Adoption of another agency's review under the Executive orders.

Subpart D—Severability

55.30 Severability.

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.

SOURCE: 59 FR 19107, Apr. 21, 1994, unless otherwise noted.

Subpart A—General

§ 55.1 Purpose.

(a)(1) The purpose of Executive Order 11988, Floodplain Management, as amended, is “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 or indirect support of floodplain development wherever there is a practicable alternative.”

(2) The purpose of Executive Order 11990, Protection of Wetlands, is “to avoid to the extent possible the long-

§ 55.2

and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.”

(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.

(b) [Reserved]

[59 FR 19107, Apr. 21, 1994, as amended at 78 FR 68728, Nov. 15, 2013; 89 FR 30903, Apr. 23, 2024]

§ 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

24 CFR Subtitle A (4–1–25 Edition)

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, water-front 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.

§ 55.3

(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.

[59 FR 19107, Apr. 21, 1994, as amended at 78 FR 68729, Nov. 15, 2013; 89 FR 30904, Apr. 23, 2024]

§ 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.

(b)(1) *The Assistant Secretary for Community Planning and Development (CPD)* shall oversee:

(i) The Department’s implementation of Executive Orders 11988 and 11990 and this part in all HUD programs; and

(ii) The implementation activities of HUD program managers and, for HUD financial assistance subject to 24 CFR part 58, of grant recipients and responsible entities.

(2) In performing these responsibilities, the Assistant Secretary for CPD shall make pertinent policy determinations in cooperation with appropriate program offices and provide necessary

24 CFR Subtitle A (4–1–25 Edition)

assistance, training, publications, and procedural guidance.

(c) *Other HUD Assistant Secretaries, the General Counsel, and the President of the Government National Mortgage Association (GNMA)* shall:

(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;

(2) Ensure that actions approved by HUD or responsible entities are monitored and that any prescribed mitigation is implemented;

(3) Ensure that the offices under their jurisdiction have the resources to implement the requirements of this part; and

(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.

[59 FR 19107, Apr. 21, 1994, as amended at 78 FR 68730, Nov. 15, 2013; 89 FR 30905, Apr. 23, 2024]

§ 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 avail-

able 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.

[89 FR 30905, Apr. 23, 2024]

§ 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

§ 55.6

(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.

24 CFR Subtitle A (4-1-25 Edition)

(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.

[89 FR 30905, Apr. 23, 2024]

§ 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.

[89 FR 30905, Apr. 23, 2024]

Subpart B—Application of Executive Orders on Floodplain Management and Protection of 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

§ 55.8

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,

24 CFR Subtitle A (4–1–25 Edition)

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.

[89 FR 30906, Apr. 23, 2024]

§ 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 on-site 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).

[89 FR 30906, Apr. 23, 2024]

§ 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

§ 55.10

(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.

[89 FR 30906, Apr. 23, 2024]

§ 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 restric-

24 CFR Subtitle A (4–1–25 Edition)

tive 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.

[89 FR 30908, Apr. 23, 2024]

§ 55.11 [Reserved]

§ 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.

[89 FR 30908, Apr. 23, 2024]

§ 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

[89 FR 30909, Apr. 23, 2024]

EDITORIAL NOTE: At 89 FR 30909, Apr. 23, 2024, § 55.13 was added; the text provided ended with ≥; and ≥.

§ 55.14

§ 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 im-

24 CFR Subtitle A (4–1–25 Edition)

provement" 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.

[89 FR 30909, Apr. 23, 2024]

Subpart C—Procedures for Making Determinations on Floodplain Management and Protection of Wetlands

§ 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.

[89 FR 30910, Apr. 23, 2024]

§ 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,

§ 55.20

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.

(3) A notice under this paragraph shall state: The name, proposed location, and description of the activity; the total number of acres of floodplain or wetland involved; the related natural and beneficial functions and values of the floodplain or wetland that may be adversely affected by the proposed activity; the HUD approving official (or the Certifying Officer of the responsible entity authorized by 24 CFR part 58); and the phone number to call for information. The notice shall indicate the hours of HUD's or the responsible entity's office, and any Web site at which a full description of the proposed action may be reviewed.

(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) Except as provided in paragraph (c)(3) of this section, HUD's or the responsible entity's consideration of practicable alternatives to the proposed site selected for a project should include:

(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

(iii) A determination not to approve any action proposing the occupancy or

24 CFR Subtitle A (4–1–25 Edition)

modification of a floodplain or wetland.

(2) Practicability of alternatives should be addressed in light of the goals identified in the project description related to the following:

(i) Natural values such as topography, habitat, and hazards;

(ii) Social values such as aesthetics, historic and cultural values, land use patterns, and environmental justice; and

(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 wet-

land. 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;

(ii) Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna; species and habitat diversity and stability; natural hydrologic function; wetland type; fish; wildlife; timber; and food and fiber resources;

(iii) Cost increases attributed to wetland-required new construction and mitigation measures to minimize harm to wetlands that may result from such use; and

(iv) Other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

(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

§ 55.20

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 cap-

24 CFR Subtitle A (4-1-25 Edition)

ture 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:

(1) Whether the action is still practicable in light of exposure to flood hazards in the floodplain or wetland, possible adverse impacts on the floodplain or wetland, the extent to which it will aggravate the current hazards to

other floodplains or wetlands, and the potential to disrupt the natural and beneficial functions and values of floodplains or wetlands; and

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

(i) The reevaluation of alternatives shall include the potential impacts avoided or caused inside and outside the floodplain or wetland area. The impacts should include the protection of human life, real property, and the natural and beneficial functions and values served by the floodplain or wetland.

(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) *Step 7.* (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:

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

(ii) A list of the alternatives considered in accordance with paragraphs (c)(1) and (c)(2) of this section; and

§ 55.21

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

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

(h) *Step 8.* Upon completion of the decisionmaking process in Steps 1 through 7, implement the proposed action. There is a continuing responsibility on HUD (or on the responsible entity authorized by 24 CFR part 58) and the recipient (if other than the responsible entity) to ensure that the mitigating measures identified in Step 7 are implemented.

[59 FR 19107, Apr. 21, 1994, as amended at 78 FR 68732, Nov. 15, 2013; 89 FR 30910, Apr. 23, 2024]

§ 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.

[89 FR 30912, Apr. 23, 2024]

§§ 55.22–55.25 [Reserved]**§ 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:

(a) There is no pending litigation relating to the other agency's review for floodplain management or wetland protection;

(b) The adopting agency makes a finding that:

(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

(2) There has been no material change in circumstances since the previous review was conducted; and

(c) HUD assistance must be conditioned on mitigation measures prescribed in the previous review.

[59 FR 19107, Apr. 21, 1994, as amended at 78 FR 68734, Nov. 15, 2013; 89 FR 30913, Apr. 23, 2024]

§§ 55.27–55.28 [Reserved]**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

Office of the Secretary, HUD

§ 58.1

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.

[89 FR 30913, Apr. 23, 2024]

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

Sec.

- 58.1 Purpose and applicability.
- 58.2 Terms, abbreviations and definitions.
- 58.4 Assumption authority.
- 58.5 Related Federal laws and authorities.
- 58.6 Other requirements.

Subpart B—General Policy: Responsibilities of Responsible Entities

- 58.10 Basic environmental responsibility.
- 58.11 Legal capacity and performance.
- 58.12 Technical and administrative capacity.
- 58.13 Responsibilities of the certifying officer.
- 58.14 Interaction with State, Federal and non-Federal entities.
- 58.15 Tiering.
- 58.17 [Reserved]
- 58.18 Responsibilities of States assuming HUD environmental responsibilities.

Subpart C—General Policy: Environmental Review Procedures

- 58.21 Time periods.
- 58.22 Limitations on activities pending clearance.
- 58.23 Financial assistance for environmental review.

Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

- 58.30 Environmental review process.
- 58.32 Project aggregation.
- 58.33 Emergencies.
- 58.34 Exempt activities.
- 58.35 Categorical exclusions.
- 58.36 Environmental assessments.
- 58.37 Environmental impact statement determinations.
- 58.38 Environmental review record.

Subpart E—Environmental Review Process: Environmental Assessments (EA's)

- 58.40 Preparing the environmental assessment.
- 58.43 Dissemination and/or publication of the findings of no significant impact.
- 58.45 Public comment periods.
- 58.46 Time delays for exceptional circumstances.
- 58.47 Re-evaluation of environmental assessments and other environmental findings.

Subpart F—Environmental Review Process: Environmental Impact Statement Determinations

- 58.52 Adoption of other agencies' EISs.
- 58.53 Use of prior environmental impact statements.

Subpart G—Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements

- 58.55 Notice of intent to prepare an EIS.
- 58.56 Scoping process.
- 58.57 Lead agency designation.
- 58.59 Public hearings and meetings.
- 58.60 Preparation and filing of environmental impact statements.

Subpart H—Release of Funds for Particular Projects

- 58.70 Notice of intent to request release of funds.
- 58.71 Request for release of funds and certification.
- 58.72 HUD or State actions on RROFs and certifications.
- 58.73 Objections to release of funds.
- 58.74 Time for objecting.
- 58.75 Permissible bases for objections.
- 58.76 Procedure for objections.
- 58.77 Effect of approval of certification.

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.

SOURCE: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

§ 58.1 Purpose and applicability.

- (a) *Purpose.* This part provides instructions and guidance to recipients