

Fed. Emergency Mgmt. Agency, DHS

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disburse the withheld funds directly to an alternate recipient: Any public or nonprofit private organization or agency, or State or political subdivision of the State.

(b) The Administrator will require any alternate recipient to demonstrate:

(1) The ability to comply with this regulation; and

(2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

§ 7.949 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and FEMA had made no finding with regard to the complaint; or

(2) FEMA issues any finding in favor of the recipient.

(b) If FEMA fails to make a finding within 180 days or issues a finding in favor of the recipient, FEMA shall:

(1) Promptly advise the complainant in writing of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States District Court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint at the time it is filed.

(iii) That before commencing the action, the complainant shall give 30 days notice by registered mail to the Administrator, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: The alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are de-

manded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court (Federal or State) of the United States.

PART 8 [RESERVED]

PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

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AUTHORITY: 6 U.S.C. 101 *et seq.*; 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4321 *et seq.*; E.O. 11988 of May 24, 1977, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990 of May 24, 1977, 42 FR 26961, 3 CFR, 1977 Comp. p. 121; E.O. 13690, 80 FR 6425; E.O. 14030, 86 FR 27967.

SOURCE: 45 FR 59526, Sept. 9, 1980, unless otherwise noted.

§ 9.1 Purpose.

This part sets forth the policy, procedure, and responsibilities to implement and enforce relevant sections of the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001 *et seq.*, the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, as amended, and other relevant statutory authorities in conjunction with Executive Order 11988, Floodplain Management, as amended, and

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Executive Order 11990, Protection of Wetlands.

[89 FR 57037, July 11, 2024]

§ 9.2 Policy.

(a) FEMA shall take no action unless and until the requirements of this regulation are complied with.

(b) The Agency will provide leadership in floodplain management and the protection of wetlands, informed by the best available and actionable science, to bolster the resilience of communities and Federal assets against the impacts of flooding, which are anticipated to increase over time due to the effects of changing conditions which adversely affect the environment, economic prosperity, public health and safety, and national security.

(c) The Agency shall integrate the goals of the Orders to the greatest possible degree into its procedures for implementing the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

(d) The Agency shall:

(1) Minimize the impact of floods on human health, safety, and welfare;

(2) Avoid long- and short-term adverse impacts associated with the occupancy and modification of floodplains and the destruction and modification of wetlands;

(3) Avoid direct and indirect support of floodplain development and new construction in wetlands wherever there is a practicable alternative;

(4) Reduce the risk of flood loss;

(5) Promote the use of nonstructural flood protection methods to reduce the risk of flood loss;

(6) Minimize the destruction, loss, or degradation of wetlands;

(7) Restore and preserve the natural and beneficial values served by floodplains;

(8) Preserve and enhance the natural values of wetlands;

(9) Involve the public throughout the floodplain management and wetlands protection decision-making process;

(10) Adhere to the objectives of the Unified National Program for Floodplain Management; and

(11) Improve and coordinate the Agency's plans, programs, functions, and resources so that the Nation may attain the widest range of beneficial

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uses of the environment without degradation or risk to health and safety.

[45 FR 59526, Sept. 9, 1980, as amended at 89 FR 57038, July 11, 2024]

§ 9.3 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 subpart and shall not affect the remainder thereof.

[89 FR 57038, July 11, 2024]

§ 9.4 Definitions.

The following definitions shall apply throughout this regulation.

0.2 percent annual chance flood elevation means the elevation to which floodwater is anticipated to rise during the 0.2 percent annual chance flood (also known as the 500-year flood).

0.2 Percent annual chance floodplain means the area subject to flooding by the 0.2 percent annual chance flood (also known as the 500-year floodplain).

1 percent annual chance flood elevation—see the definition of *base flood elevation* in this section.

1 percent annual chance floodplain means the area subject to flooding by the 1 percent annual chance flood (also known as the 100-year floodplain or base floodplain).

Action means

(1) Acquiring, managing, and disposing of Federal lands and facilities;

(2) Providing federally undertaken, financed, or assisted construction and improvements; and

(3) Conducting Federal activities and programs affecting land use, including, but not limited to, water and related land resources, planning, regulating, and licensing activities.

Action subject to the Federal Flood Risk Management Standard (FFRMS) means any action where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility.

Actions affecting or affected by floodplains or wetlands means actions

which have the potential to result in the long- or short-term impacts associated with:

(1) The occupancy or modification of floodplains, and the direct or indirect support of floodplain development, or

(2) The destruction and modification of wetlands and the direct or indirect support of new construction in wetlands.

Administrator means the Administrator of the Federal Emergency Management Agency.

Agency means the Federal Emergency Management Agency (FEMA).

Agency Assistance means grants for projects or planning activities, loans, and all other forms of financial or technical assistance provided by the Agency.

Base flood elevation means the elevation to which floodwater is anticipated to rise during the 1 percent annual chance flood (also known as the base flood or 100-year flood). The terms “base flood elevation,” “1 percent annual change flood elevation,” and “100-year flood elevation” are synonymous and are used interchangeably.

Coastal high hazard area means an area of flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Critical action means any action for which even a slight chance of flooding is too great. Critical actions include, but are not limited to, those which create or extend the useful life of structures or facilities:

(1) Such as those which produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(2) Such as hospitals and nursing homes, and housing for the elderly, which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(3) Such as emergency operation centers, or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and

(4) Such as generating plants, and other principal points of utility lines.

Direct Impacts means changes in floodplain or wetland values and functions and changes in the risk to lives and property caused or induced by an action or related activity. Impacts are caused whenever these natural values and functions are affected as a direct result of an action. An action which would result in the discharge of polluted storm waters into a floodplain or wetland, for example, would directly affect their natural values and functions. Construction-related activities, such as dredging and filling operations within the floodplain or a wetland would be another example of impacts caused by an action.

Emergency actions means emergency work essential to save lives and protect property and public health and safety performed under sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (42 U.S.C. 5170b and 5192).

Enhance means to increase, heighten, or improve the natural and beneficial values associated with wetlands.

Facility means any man-made or man-placed item other than a structure.

Federal Flood Risk Management Standard (FFRMS) means the Federal flood risk management standard to be incorporated into existing processes used to implement Executive Order 11988, as amended.

Federal Flood Risk Management Standard (FFRMS) floodplain means the floodplain established using one of the approaches described in §9.7(c) of this part.

Federally funded project—see the definition of *Action subject to the Federal Flood Risk Management Standard* in this section.

FEMA means the Federal Emergency Management Agency.

FEMA Resilience means the organization within FEMA that includes the Federal Insurance and Mitigation Administration, the Grants Program Directorate, and the National Preparedness Directorate.

Flood or flooding means the general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation of runoff of

surface waters from any source. *0.2 percent annual chance flood* means the flood which has a 0.2 percent chance of being equaled or exceeded in any given year (also known as the 500-year flood). *1 percent annual chance flood* means the flood which has a 1 percent chance of being equaled or exceeded in any given year (also known as the 100-year flood or base flood). The terms “base flood,” “1 percent annual chance flood,” and “100-year flood” are synonymous and are used interchangeably.

Floodplain means any land area that is subject to flooding. The term “floodplain,” by itself, refers to geographic features with undefined boundaries. For the purposes of this part, the FFRMS floodplain shall be established using one of the approaches described in §9.7(c). See the definitions of *0.2 percent annual chance floodplain*, *1 percent annual chance floodplain*, and *Federal Flood Risk Management Standard floodplain* in this section.

Floodproofing means the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out, or to reduce effects of water entry.

Floodway means that portion of the floodplain which is effective in carrying flow, within which this carrying capacity must be preserved and where the flood hazard is generally highest, i.e., where water depths and velocities are the greatest. It is that area which provides for the discharge of the base flood so the cumulative increase in water surface elevation is no more than one foot.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

Indirect Impacts means an indirect result of an action whenever the action induces or makes possible related activities which effect the natural values and functions of floodplains or wetlands or the risk to lives and property. Such impacts occur whenever these values and functions are potentially affected, either in the short- or long-term, as a result of undertaking an action.

Minimize means to reduce to the smallest amount or degree possible.

Mitigation means steps necessary to minimize the potentially adverse effects of the proposed action, and to restore and preserve the natural and beneficial floodplain values and to preserve and enhance natural values of wetlands.

National security means:

(1) A condition that is provided by either:

(i) A military or defense advantage over any foreign nation or group of nations;

(ii) A favorable foreign relations position; or

(iii) A defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert.

(2) National security encompasses both national defense and foreign relations of the United States.

Natural and beneficial values of floodplains and wetlands means features or resources that provide environmental and societal benefits. Water and biological resources are often referred to as “natural functions of floodplains and wetlands.” These values include, but are not limited to:

(1) Water resource values (storing and conveying floodwaters, maintaining water quality, and groundwater recharge);

(2) Living resource values (providing habitats and enhancing biodiversity for fish, wildlife, and plant resources);

(3) Cultural resource values (providing open space, natural beauty, recreation, scientific study, historic and archaeological resources, and education; and

(4) Cultivated resource values (creating rich soils for agriculture, aquaculture, and forestry).

Natural features means characteristics of a particular environment (e.g., barrier islands, sand dunes, wetlands) that are created by physical, geological, biological, and chemical processes and exist in dynamic equilibrium. Natural features are self-sustaining parts of the landscape that require little or no maintenance to continue providing their ecosystem services (functions).

Nature-based approaches means the features (sometimes referred to as “green infrastructure”) designed to mimic natural processes and provide

specific services such as reducing flood risk and/or improving water quality. Nature-based approaches are created by human design (in concert with and to accommodate natural processes) and generally, but not always, must be maintained in order to reliably provide the intended level of service.

New construction means the construction of a new structure or facility or the replacement of a structure or facility which has been totally destroyed. New construction includes permanent installation of temporary housing units. New construction in wetlands includes draining, dredging, channelizing, filling, diking, impounding, and related activities.

Orders means Executive Order 11988, Floodplain Management, as amended, and Executive Order 11990, Protection of Wetlands.

Practicable means capable of being done within existing constraints. The test of what is practicable depends on the situation and includes consideration of all pertinent factors, such as natural environment, social concerns, economic aspects, legal constraints, and agency authorities.

Preserve means to prevent alterations to natural conditions and to maintain the values and functions which operate the floodplains or wetlands in their natural states.

Regional Administrator means the Regional Administrator of the Federal Emergency Management Agency for the Region in which FEMA is acting, or the Disaster Recovery Manager when one is designated.

Regulatory floodway means the area regulated by Federal, State, or local requirements to provide for the discharge of the base flood so the cumulative rise in the water surface is no more than a designated amount above the base flood elevation.

Restore means to reestablish a setting or environment in which the natural functions of the floodplain can operate.

Structure means a walled and roofed building, including a temporary housing unit (manufactured housing) or a gas or liquid storage tank.

Substantial improvement means any repair, reconstruction or other improvement of a structure or facility, which has been damaged in excess of, or the

cost of which equals or exceeds, 50 percent of the pre-disaster market value of the structure or replacement cost of the facility (including all "public facilities" as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988) before the repair or improvement is started, or if the structure or facility has been damaged and is proposed to be restored. Substantial improvement includes work to address substantial damage to a structure or facility. If a facility is an essential link in a larger system, the percentage of damage will be based on the cost of repairing the damaged facility relative to the replacement cost of the portion of the system which is operationally dependent on the facility. The term "substantial improvement" does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

Support of floodplain and wetland development means to, directly or indirectly, encourage, allow, serve, or otherwise facilitate development in floodplains or wetlands. Development means any man-made change to improved or unimproved real estate, including but not limited to new construction, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials. Direct support results from actions within floodplains or wetlands, and indirect support results from actions outside of floodplains or wetlands.

Wetlands means those areas which are inundated or saturated by surface or ground water with a frequency sufficient to support, or that under normal hydrologic conditions does or would support, a prevalence of vegetation or aquatic life typically adapted for life in saturated or seasonally saturated soil conditions, including wetlands areas separated from their natural supply of water as a result of construction activities such as structural flood protection methods or solid-fill road beds, and activities such as mineral extraction and navigation improvements. Examples of wetlands include, but are not limited to, swamps, fresh and salt water marshes, estuaries, bogs, beaches, wet meadows, sloughs, potholes,

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mud flats, river overflows, and other similar areas. This definition is intended to be consistent with the definition utilized by the U.S. Fish and Wildlife Service.

[45 FR 59526, Sept. 9, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 50 FR 40006, Oct. 1, 1985; 74 FR 15335, Apr. 3, 2009; 89 FR 57038, July 11, 2024]

§ 9.5 Scope.

(a) *Applicability.* (1) These regulations apply to all Agency actions which have the potential to affect floodplains or wetlands or their occupants, or which are subject to potential harm by location in floodplains or wetlands.

(2) The basic test of the potential of an action to affect floodplains or wetlands is the action's potential (both by itself and when viewed cumulatively with other proposed actions) to result in the long- or short-term adverse impacts associated with:

(i) The occupancy or modification of floodplains, and the direct and indirect support of floodplain development; or

(ii) The destruction or modification of wetlands and the direct or indirect support of new construction in wetlands.

(3) The amendments to this part made on September 9, 2024 apply to new actions for which assistance is made available pursuant to declarations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 on or after September 9, 2024 and new actions for which assistance is made available pursuant to notices of funding opportunities published on or after September 9, 2024. For ongoing actions for which assistance was made available prior to that date, legacy program regulations (available at <http://www.fema.gov>) shall apply.

(b) *Limited exemption of ongoing actions involving wetlands located outside the floodplains.* (1) Executive Order 11990, Protection of Wetlands, contains a limited exemption not found in Executive Order 11988, Floodplain Management, as amended. Therefore, this exemption applies only to actions affecting wetlands which are located outside the floodplains, and which have no potential to result in harm to or within floodplains or to support floodplain development.

(2) The following proposed actions that impact wetlands located outside of floodplains are exempt from this regulation:

(i) Agency-assisted or permitted projects which were under construction before May 24, 1977; and

(ii) Projects for which the Agency has proposed a draft of a final environmental impact statement (EIS) which adequately analyzes the action and which was filed before October 1, 1977. Proposed actions that impact wetlands outside of floodplains are not exempt if the EIS:

(A) Only generally covers the proposed action;

(B) Is devoted largely to related activities; or

(C) Treats the project area or program without an adequate and specific analysis of the floodplain and wetland implications of the proposed action.

(c) *Decision-making involving certain categories of actions.* The provisions set forth in this part are not applicable to the actions enumerated in paragraphs (c)(1) through (10) of this section except that the Regional Administrators shall comply with the spirit of Executive Order 11988, as amended, and Executive Order 11990 to the extent practicable. For any action which is excluded from the actions enumerated below, the full 8-step process applies (see § 9.6) (except as indicated at paragraphs (d), (e), and (g) of this section regarding other categories of partial or total exclusion). The provisions of this part do not apply to the following (all references are to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Public Law 93–288, as amended, except as noted):

(1) Assistance provided for emergency work essential to save lives and protect property and public health and safety performed pursuant to sections 403 and 502;

(2) Emergency Support Teams (section 303);

(3) Emergency Communications (section 418);

(4) Emergency Public Transportation (section 419);

(5) Fire Management Assistance (section 420), except for hazard mitigation assistance under sections 404 and 420(d);

(6) Community Disaster Loans (section 417), except to the extent that the proceeds of the loan will be used for repair of facilities or structures or for construction of additional facilities or structures;

(7) The following Federal Assistance to Individuals and Households Program (section 408) categories of assistance:

(i) Financial assistance for temporary housing (section 408(c)(1)(A));

(ii) Lease and repair of rental units for temporary housing (section 408(c)(1)(B)(ii)), except that Step 1 (§9.7) shall be carried out;

(iii) Repairs (section 408(c)(2));

(iv) Replacement (section 408(c)(3)); and

(v) Financial assistance to address other needs (section 408(e)).

(8) Debris clearance and removal (sections 403 and 502), except those grants involving non-emergency disposal of debris within a floodplain or wetland (section 407);

(9) Actions under sections 406 and 407 of less than \$18,000. Such \$18,000 amount will be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor;

(10) Placement of families in existing resources and Temporary Relocation Assistance provided to those families so placed under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510.

(d) *Abbreviated decision-making process applying steps 1, 4, 5, and 8.* The Regional Administrator shall apply steps 1, 4, 5, and 8 of the decision-making process (§§9.7, 9.10, and 9.11) to repairs under section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Public Law 93-288, as amended, between \$18,000 and \$91,000. Such \$18,000 and \$91,000 amounts will be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor. For any action which is excepted from the actions listed below (except as otherwise provided in this section regarding other categories of partial or total exclusion), the full 8-step process applies (See §9.6). The Regional Administrator may also require certain other portions of

the decision-making process to be carried out for individual actions as is deemed necessary. Steps 1, 4, 5, and 8 of the decision-making process apply to actions under section 406 of the Stafford Act referenced above except for:

(1) Actions in a floodway or coastal high hazard area; or

(2) New construction, substantial improvement, or repairs to address substantial damage of structures or facilities; or

(3) Facilities or structures which have previously sustained damage from flooding due to a major disaster or emergency or on which a flood insurance claim has been paid; or

(4) Critical actions.

(e) *Abbreviated decision-making process applying steps 1, 2, 4, 5, and 8.* The Regional Administrator shall apply steps 1, 2, 4, 5, and 8 of the decision-making process (§§9.7, 9.8, 9.10, and 9.11, see §9.6) to certain actions under Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Public Law 93-288, as amended, provided in paragraphs (e)(1) and (2) of this section. Steps 3 and 6 (§9.9) shall be carried out except that alternative sites outside the floodplain or wetland need not be considered. After assessing impacts of the proposed action on the floodplain or wetlands and of the site on the proposed action, alternative actions to the proposed action, if any, and the “no action” alternative shall be considered. The Regional Administrator may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. For any action which is excluded from the actions listed below (except as otherwise provided in this section regarding other categories of partial or total exclusion), the full 8-step process applies (see §9.6). The Regional Administrator shall apply steps 1, 2, 4, 5, and 8 of the decision-making process (§§9.7, 9.8, 9.10, and 9.11, see §9.6) to:

(1) Replacement of building contents, materials, and equipment (section 406).

(2) Repairs under section 406 to damaged facilities or structures, except any such action for which one or more of the following is applicable:

(i) FEMA estimated cost of repairs is more than 50 percent of the estimated

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reconstruction cost of the entire facility or structure or is more than \$364,000. Such \$364,000 amount will be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor; or

(ii) The action is located in a floodway or coastal high hazard area; or

(iii) Facilities or structures which have previously sustained structural damage from flooding due to a major disaster or emergency or on which a flood insurance claim has been paid; or

(iv) The action is a critical action.

(f) *Other categories of actions.* Based upon the completion of the 8-step decision-making process (§9.6), the Regional Administrator may find that a specific category of actions either offers no potential for carrying out the purposes of the Orders and shall be treated as those actions listed in paragraph (c) of this section, or has no practicable alternative sites and shall be treated as those actions listed in paragraph (e) of this section, or has no practicable alternative actions or sites and shall be treated as those actions listed in paragraph (d) of this section. This finding will be made in consultation with FEMA Resilience and the Council on Environmental Quality as provided in section 2(d) of Executive Order 11988, as amended. Public notice of each of these determinations shall include publication in the FEDERAL REGISTER and a 30-day comment period.

(g) *The National Flood Insurance Program (NFIP).* (1) FEMA Resilience shall apply the 8-step decision-making process to program-wide actions under the NFIP, including all regulations, procedures, and other issuances making or amending program policy, and the establishment of programmatic standards or criteria. FEMA Resilience shall not apply the 8-step decision-making process to the application of programmatic standards or criteria to specific situations. Thus, for example, FEMA Resilience would apply the 8-step process to a programmatic determination of categories of structures to be insured, but not to whether to insure each individual structure.

(2) The provisions set forth in this part are not applicable to the actions

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enumerated below except that FEMA Resilience shall comply with the spirit of the Orders to the extent practicable:

(i) The issuance of individual flood insurance policies and policy interpretations;

(ii) The adjustment of claims made under the Standard Flood Insurance Policy;

(iii) The hiring of independent contractors to assist in the implementation of the NFIP;

(iv) The issuance of individual flood insurance maps, Map Information Facility map determinations, and map amendments; and

(v) The conferring of eligibility for emergency or regular program (NFIP) benefits upon communities.

[45 FR 59526, Sept. 9, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 49 FR 35583, Sept. 10, 1984; 50 FR 40006, Oct. 1, 1985; 51 FR 39531, Oct. 29, 1986; 66 FR 57347, Nov. 14, 2001; 89 FR 57040, July 11, 2024]

§ 9.6 Decision-making process.

(a) *Purpose.* This section sets out the floodplain management and wetlands protection decision-making process to be followed by the Agency in applying the Orders to its actions. The numbering of Steps 1 through 8 does not require that the steps be followed sequentially. As information is gathered through the decision-making process, and as additional information is needed, reevaluation of lower numbered steps may be necessary.

(b) *Decision-making process.* Except as otherwise provided in §9.5 regarding categories of partial or total exclusion when proposing an action, the Agency shall apply the 8-step decision-making process. FEMA shall:

(1) *Step 1.* Determine whether the proposed action is located in a floodplain and/or a wetland as established by §9.7; and whether it has the potential to affect or be affected by a floodplain or wetland (see §9.7);

(2) *Step 2.* Notify the public at the earliest possible time of the intent to carry out an action in a floodplain or wetland, and involve the affected and interested public in the decision-making process (see §9.8);

(3) *Step 3.* Identify and evaluate practicable alternatives to locating the

proposed action in a floodplain or wetland (including alternative sites, actions, natural features, nature-based approaches, and the “no action” option) (see §9.9). If a practicable alternative exists outside the floodplain or wetland FEMA must locate the action at the alternative site.

(4) *Step 4.* Identify the potential direct and indirect impacts associated with the occupancy or modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action (see §9.10);

(5) *Step 5.* Minimize the potential adverse impacts to or within floodplains and wetlands and minimize support of floodplain and wetland development identified under Step 4. Restore and preserve the natural and beneficial values served by floodplains, and preserve and enhance the natural and beneficial values served by wetlands. Integrate nature-based approaches where appropriate (see §9.11);

(6) *Step 6.* Reevaluate the proposed action to determine first, if it is still practicable in light of its exposure to flood hazards, the extent to which it will aggravate hazards to others, and its potential to disrupt floodplain and wetland values; and second, if alternatives preliminarily rejected at Step 3 are practicable in light of the information gained in Steps 4 and 5. FEMA shall not act in a floodplain or wetland unless it is the only practicable location (see §9.9);

(7) *Step 7.* Prepare and provide the public with a finding and public explanation of any final decision that the floodplain or wetland is the only practicable alternative (see §9.12); and

(8) *Step 8.* Review the implementation and post-implementation phases of the proposed action to ensure that the requirements stated in §9.11 are fully implemented. Oversight responsibility shall be integrated into existing processes.

[89 FR 57041, July 11, 2024]

§9.7 Determination of proposed action's location.

(a) *Purpose.* This section establishes Agency procedures for determining whether any action as proposed is lo-

cated in or affects a floodplain established in paragraph (c) of this section or a wetland.

(b) *Information needed.* (1) The Agency shall obtain enough information so that it can fulfill the requirements in this part to:

(i) Avoid Federal action in floodplain and wetland locations unless they are the only practicable alternatives; and

(ii) Minimize harm to and within floodplains and wetlands.

(2) In all cases, FEMA shall determine whether the proposed action is located in a floodplain or wetland. Information about the floodplain as established by paragraph (c) of this section and the location of floodways and coastal high hazard areas may also be needed to comply with this part, especially §9.11.

(3) The following additional current and future flooding characteristics may be identified by the Regional Administrator as applicable:

- (i) Velocity of floodwater;
- (ii) Rate of rise of floodwater;
- (iii) Duration of flooding;
- (iv) Available warning and evacuation time and routes;
- (v) Special problems:
 - (A) Levees;
 - (B) Erosion;
 - (C) Subsidence;
 - (D) Sink holes;
 - (E) Ice jams;
 - (F) Debris load;
 - (G) Pollutants;
 - (H) Wave heights;
 - (I) Groundwater flooding;
 - (J) Mudflow.
- (vi) Any other applicable flooding characteristics.

(c) *Floodplain determination.* In the absence of a finding to the contrary, FEMA will determine that a proposed action involving a facility or structure that has been flooded previously is in the floodplain. In determining if a proposed action is in the floodplain:

(1) FEMA shall determine whether the action is an action subject to the FFRMS as defined in §9.4.

(i) If the action is an action subject to the FFRMS, FEMA shall establish the FFRMS floodplain area and associated flood elevation by using the process specified in (c)(3) of this section and one of the following approaches:

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(A) **Climate-Informed Science Approach (CISA):** Using a climate-informed science approach that uses the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science. This approach will also include an emphasis on whether the action is a critical action as one of the factors to be considered when conducting the analysis;

(B) **Freeboard Value Approach (FVA):** Using the freeboard value, reached by adding an additional 2 feet to the base flood elevation for non-critical actions and by adding an additional 3 feet to the base flood elevation for critical actions;

(C) **0.2-Percent-Annual-Chance Flood Approach (0.2PFA):** The 0.2 percent annual chance flood; or

(D) Any other method identified in an update to the FFRMS.

(ii) FEMA may select among and prioritize the approaches in this paragraph (c)(1) by policy.

(iii) FEMA may provide an exception to using the FFRMS floodplain and corresponding flood elevation for an action subject to the FFRMS and instead use the 1 percent annual chance (base) floodplain for non-critical actions or the 0.2 percent annual chance floodplain for critical actions where the action is in the interest of national security, where the action is an emergency action, or where the action is a mission-critical requirement related to a national security interest or an emergency action.

(2) If the action is not an action subject to the FFRMS as defined in §9.4, FEMA shall use, at a minimum:

(i) The 1 percent annual chance (base) floodplain and flood elevation for non-critical actions; and

(ii) The 0.2 percent annual chance floodplain and flood elevation for critical actions.

(3) FEMA shall establish the floodplain and corresponding elevation using the best available information. The floodplain and corresponding elevation determined using the best available information must be at least as restrictive as FEMA's regulatory determinations under the NFIP where such determinations are available. In obtaining the best available information,

FEMA may consider other FEMA information as well as other available information, such as information from:

(i) Department of Agriculture: Natural Resources Conservation Service, U.S. Forest Service;

(ii) Department of Defense: U.S. Army Corps of Engineers;

(iii) Department of Commerce: National Oceanic and Atmospheric Administration;

(iv) Department of the Interior: Bureau of Land Management, Bureau of Reclamation, National Park Service, U.S. Fish and Wildlife Service, United States Geological Survey;

(v) Tennessee Valley Authority;

(vi) Department of Transportation;

(vii) Environmental Protection Agency;

(viii) General Services Administration;

(ix) Agencies of State, Regional, and Indian Tribal governments; or

(x) Local sources such as Floodplain Administrators, Regional Flood Control Districts, or Transportation Departments.

(4) If the sources listed in paragraph (c)(3) of this section do not have or know of the information necessary to comply with the requirements in this part, the Regional Administrator may seek the services of a professional registered engineer.

(5) If a decision involves an area or location within extensive Federal or state holdings or a headwater area and FEMA's regulatory determinations under the National Flood Insurance Program are not available, the Regional Administrator shall seek information from the land administering agency before information and/or assistance is sought from the sources listed in paragraph (c)(3) of this section.

(d) *Wetland determination.* The following sequence shall be followed by the Agency in making the wetland determination.

(1) The Agency shall consult with the U.S. Fish and Wildlife Service (FWS) for information concerning the location, scale and type of wetlands within the area which could be affected by the proposed action.

(2) If the FWS does not have adequate information upon which to base the determination, the Agency shall consult wetland inventories maintained by the Army Corps of Engineers, the Environmental Protection Agency, various states, communities and others.

(3) If the identified sources do not have adequate information upon which to base the determination, the Agency shall carry out an on-site analysis performed by a representative of the FWS or other qualified individual for wetlands characteristics based on the definition of a wetland in § 9.4.

(4) If an action constitutes new construction and is in a wetland but not in a floodplain, the provisions of this part shall apply. If the action is not in a wetland, the Regional Administrator shall determine if the action has the potential to result in indirect impacts on wetlands. If so, all potential adverse impacts shall be minimized. For actions which are in a wetland and the floodplain, completion of the decision-making process is required. (See § 9.6). In such a case, the wetland will be considered as one of the natural and beneficial values of the floodplain.

[45 FR 59526, Sept. 9, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 49 FR 33879, Aug. 27, 1984; 50 FR 40006, Oct. 1, 1985; 51 FR 34605, Sept. 30, 1986; 89 FR 57042, July 11, 2024]

§ 9.8 Public notice requirements.

(a) *Purpose.* This section establishes the initial notice procedures to be followed when the Agency proposes any action in or affecting floodplains or wetlands.

(b) *General.* The Agency shall provide adequate information to enable the public to have impact on the decision outcome for all actions having potential to affect, adversely, or be affected by floodplains or wetlands that it proposes. To achieve this objective, the Agency shall:

(1) Provide the public with adequate information and opportunity for review and comment at the earliest possible time and throughout the decision-making process; and upon completion of this process, provide the public with an accounting of its final decisions (see § 9.12); and

(2) Rely on its environmental assessment processes, to the extent possible,

as vehicles for public notice, involvement and explanation.

(c) *Early public notice.* The Agency shall provide opportunity for public involvement in the decision-making process through the provision of public notice upon determining that the proposed action can be expected to affect or be affected by floodplains or wetlands. Whenever possible, notice shall precede major project site identification and analysis in order to preclude the foreclosure of options consistent with the Orders.

(1) For an action for which an environmental impact statement is being prepared, the Notice of Intent to File an EIS constitutes the early public notice if it includes the information required under paragraph (c)(5) of this section.

(2) For each action having national significance for which notice is being provided, the Agency at a minimum shall provide notice by publication in the FEDERAL REGISTER and shall provide notice by mail to national organizations reasonably expected to be interested in the action. The additional notices listed in paragraph (c)(4) of this section shall be used in accordance with the determination made under paragraph (c)(3) of this section.

(3) The Agency shall determine whether it has provided appropriate notices, adequate comment periods, and whether to issue cumulative notices (paragraphs (c)(4), (6), and (7) of this section) based on factors which include, but are not limited to:

- (i) Scale of the action;
- (ii) Potential for controversy;
- (iii) Degree of public need;
- (iv) Number of affected agencies and individuals; and
- (v) Anticipated potential impact of the action.

(4) For each action having primarily local importance for which notice is being provided, notice shall be made in accordance with the criteria under paragraph (c)(3) of this section, and shall include, as appropriate:

- (i) Notice through the internet or another comparable method.
- (ii) Notice to Indian tribes when effects may occur on reservations.

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(iii) Information required in the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers.

(v) Notice through other local media including newsletters.

(vi) Notice to potential interested community organizations.

(vii) Direct mailing to owners and occupants of nearby or affected property.

(viii) Posting of notice on and off site in the area where the action is to be located.

(ix) Public hearing.

(5) The notice shall:

(i) Describe the action, its purposes, and a statement of the intent to carry out an action affecting or affected by a floodplain or wetland;

(ii) Based on the factors in paragraph (c)(3) of this section, include a map of the area and other identification of the floodplain and/or wetland areas which is of adequate scale and detail; alternatively, FEMA may state that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information or may provide a link to access the map online;

(iii) Based on the factors in paragraph (c)(3) of this section, describe the type, extent, and degree of hazard involved and the floodplain or wetland values present; and

(iv) Identify the responsible official or organization for implementing the proposed action, and from whom further information can be obtained.

(6) The Agency shall provide for an adequate comment period.

(7) In a post-disaster situation in particular, the requirement for early public notice may be met in a cumulative manner based on the factors set out in paragraph (c)(3) of this section. Several actions may be addressed in one notice or series of notices. For some actions involving limited public interest a single notice in a local newspaper or letter to interested parties may suffice.

(d) *Continuing public notice.* The Agency shall keep the public informed of the progress of the decision-making process through additional public notices at key points in the process. The preliminary information provided under paragraph (c)(5) of this section

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shall be augmented by the findings of the adverse effects of the proposed actions and steps necessary to mitigate them. This responsibility shall be performed for actions requiring the preparation of an EIS, and all other actions having the potential for major adverse impacts, or the potential for harm to the health and safety of the general public.

[45 FR 59526, Sept. 9, 1980, as amended at 48 FR 29318, June 24, 1983; 89 FR 57042, July 11, 2024]

§ 9.9 Analysis and reevaluation of practicable alternatives.

(a) *Purpose.* (1) This section expands upon the directives set out in § 9.6 of this part in order to clarify and emphasize the requirements to avoid floodplains and wetlands unless there is no practicable alternative.

(2) Step 3 is a preliminary determination as to whether the floodplain is the only practicable location for the action. It is a preliminary determination because it comes early in the decision-making process when the Agency has a limited amount of information. If it is clear that there is a practicable alternative, or the floodplain or wetland is itself not a practicable location, FEMA shall then act on that basis. Provided that the location outside the floodplain or wetland does not indirectly impact floodplains or wetlands or support development therein (see § 9.10), the remaining analysis set out by this regulation is not required. If such location does indirectly impact floodplains or wetlands or support development therein, the remaining analysis set out by this regulation is required. If the preliminary determination is to act in the floodplain, FEMA shall gather the additional information required under Steps 4 and 5 and then reevaluate all the data to determine if the floodplain or wetland is the only practicable alternative.

(b) *Analysis of practicable alternatives.* The Agency shall identify and evaluate practicable alternatives to carrying out a proposed action in floodplains or wetlands, including:

(1) Alternative sites outside the floodplain or wetland;

(2) Alternative actions which serve essentially the same purpose as the

proposed action, but which have less potential to affect or be affected by the floodplain or wetlands. In developing the alternative actions, the Agency shall use, where possible, natural systems, ecosystem processes, and nature-based approaches; and

(3) *No action*. The floodplain and wetland site itself must be a practicable location in light of the factors set out in this section.

(c) The Agency shall analyze the following factors in determining the practicability of the alternatives set out in paragraph (b) of this section:

(1) Natural environment (including, but not limited to topography, habitat, hazards, when applicable);

(2) Social concerns (including, but not limited to aesthetics, historical and cultural values, land patterns, when applicable);

(3) Economic aspects (including, but not limited to costs of space, technology, construction, services, relocation, when applicable);

(4) Legal constraints (including, but not limited to deeds and leases, when applicable); and

(5) Agency authorities.

(1) The Agency shall not locate the proposed action in the floodplain as established by §9.7(c) or in a wetland if a practicable alternative exists outside the floodplain or wetland.

(2) If no practicable alternative exists outside the floodplain or wetland, in order to carry out the action the floodplain or wetland must itself be a practicable location in light of the review required in this section.

(e) *Reevaluation of alternatives*. Upon determination of the impact of the proposed action to or within the floodplain or wetland and of what measures are necessary to comply with the requirement to minimize harm to and within floodplains and wetlands (§9.11), FEMA shall:

(1) Determine whether:

(i) The action is still practicable at a floodplain or wetland site, considering the flood risk and the ensuing disruption of natural values;

(ii) The floodplain or wetland site is the only practicable alternative;

(iii) The scope of the action can be limited to increase the practicability of previously rejected non-floodplain or

wetland sites and alternative actions; and

(iv) Harm to or within the floodplain can be minimized using all practicable means.

(2) Take no action in a floodplain unless the importance of the floodplain site clearly outweighs the requirements to:

(i) Avoid direct or indirect support of floodplain development;

(ii) Reduce the risk of flood loss;

(iii) Minimize the impact of floods on human safety, health and welfare; and

(iv) Restore and preserve floodplain values.

(3) Take no action in a wetland unless the importance of the wetland site clearly outweighs the requirements to:

(i) Avoid the destruction or modification of the wetlands;

(ii) Avoid direct or indirect support of new construction in wetlands;

(iii) Minimize the destruction, loss or degradation of wetlands; and

(iv) Preserve and enhance the natural and beneficial values of wetlands.

(4) In carrying out this balancing process, give the factors in paragraphs (e)(2) and (3) of this section great weight.

(5) Choose the “no action” alternative where there are no practicable alternative actions or sites and where the floodplain or wetland is not itself a practicable alternative. In making the assessment of whether a floodplain or wetland location is itself a practicable alternative, the practicability of the floodplain or wetland location shall be balanced against the practicability of not carrying out the action at all. That is, even if there is no practicable alternative outside of the floodplain or wetland, the floodplain or wetland itself must be a practicable location in order for the action to be carried out there. To be a practicable location, the importance of carrying out the action must clearly outweigh the requirements of the Orders listed in paragraphs (e)(2) and (e)(3) of this section. Unless the importance of carrying out the action clearly outweighs those requirements, the “no action” alternative shall be selected.

[45 FR 59526, Sept. 9, 1980, as amended at 89 FR 57043, July 11, 2024]

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§ 9.10 Identify impacts of proposed actions.

(a) This section ensures that the effects of proposed Agency actions are identified.

(b) The Agency shall identify the potential direct and indirect adverse impacts associated with the occupancy and modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action. Such identification of impacts shall be to the extent necessary to comply with the requirements of this part to avoid floodplain and wetland locations unless they are the only practicable alternatives to minimize harm to and within floodplains and wetlands.

(c) This identification shall consider whether the proposed action will result in an increase in the useful life of any structure or facility in question, maintain the investment at risk and exposure of lives to the flood hazard or forego an opportunity to restore the natural and beneficial values served by floodplains or wetlands.

(d) In the review of a proposed or alternative action, the Regional Administrator shall consider and evaluate: impacts associated with modification of wetlands and floodplains regardless of its location; additional impacts which may occur when certain types of actions may support subsequent action which have additional impacts of their own; adverse impacts of the proposed actions on lives and property and on natural and beneficial floodplain and wetland values; and the three categories of factors listed below:

(1) *Flood hazard-related factors.* These include, but are not limited to, the factors listed in § 9.7(b)(3);

(2) *Natural values-related factors.* These include, but are not limited to: water resource values, as in storing and conveying floodwaters, maintaining water quality, and groundwater recharge; living resource values, as in providing habitats and enhancing biodiversity for fish and wildlife and plant resources; cultural resource values, as in providing open space, natural beauty, recreation, scientific study, historical and archaeological resources, and education; and cultivated resource val-

ues, as in creating rich soils for agriculture, aquaculture, and forestry.

(3) *Factors relevant to a proposed action's effects on the survival and quality of wetlands.* These include, but are not limited to: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

[45 FR 59526, Sept. 9, 1980, as amended at 89 FR 57043, July 11, 2024]

§ 9.11 Mitigation.

(a) *Purpose.* This section expands upon the directives set out in § 9.6 of this part and sets out the mitigative actions required if the preliminary determination is made to carry out an action that affects or is in a floodplain or wetland.

(b) *General provisions.* (1) The Agency shall design or modify its actions so as to minimize harm to or within the floodplain;

(2) The Agency shall minimize the destruction, loss or degradation of wetlands;

(3) The Agency shall restore and preserve natural and beneficial floodplain values; and

(4) The Agency shall preserve and enhance natural and beneficial wetland values.

(c) *Minimization provisions.* The Agency shall minimize:

(1) Potential harm to lives and the investment from flooding based on flood elevations as established by § 9.7(c);

(2) Potential adverse impacts the action may have on others; and

(3) Potential adverse impact the action may have on floodplain and wetland values.

(d) *Minimization Standards.* The Agency shall apply, at a minimum, the following standards to its actions to comply with the requirements of paragraphs (b) and (c) of this section (except as provided in §9.5(c), (d), and (g) regarding categories of partial or total exclusion). Any Agency action to which the following specific requirements do not apply, shall nevertheless be subject to the full 8-step process (§9.6) including the general requirement to minimize harm to and within floodplains:

(1) There shall be no new construction or substantial improvement in a floodway and no new construction in a coastal high hazard area, except for:

- (i) A functionally dependent use; or
- (ii) A structure or facility which facilitates an open space use.

(2) For a structure which is a functionally dependent use or which facilitates an open space use, the following applies: Any construction of a new or substantially improved structure in a coastal high hazard area must be elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the floodplain as established by §9.7(c). The structure shall be anchored so as to withstand velocity waters and hurricane wave wash.

(3) The following applies to elevation of structures:

(i) There shall be no new construction or substantial improvement of structures unless the lowest floor of the structures (including basement) is at or above the elevation of the floodplain as established by §9.7(c).

(ii) If the subject structure is non-residential, instead of elevating the structure, FEMA may approve the design of the structure and its attendant utility and sanitary facilities so that the structure is watertight below the flood elevation with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(iii) The provisions of paragraphs (d)(3)(i) and (ii) of this section do not

apply to the extent that FEMA Resilience has granted an exception under §60.6(b) of this chapter, or the community has granted a variance which the Regional Administrator determines is consistent with §60.6(a) of this chapter. In a community which does not have a FEMA regulatory product in effect, FEMA may approve a variance from the standards of paragraphs (d)(3)(i) and (ii) of this section, after compliance with the standards of §60.6(a).

(4) There shall be no encroachments, including but not limited to fill, new construction, substantial improvements of structures or facilities, or other development within a designated regulatory floodway that would result in any increase in flood elevation within the community during the occurrence of the 1 percent annual chance (base) flood discharge. Until a regulatory floodway is designated, no fill, new construction, substantial improvements, or other development shall be permitted within the 1 percent annual chance (base) floodplain unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the 1 percent annual chance (base) flood more than the amount designated by the NFIP or the community, whichever is most restrictive.

(5) Even if an action is a functionally dependent use or facilitates open space uses (under paragraph (d)(1) or (2) of this section) and does not increase flood heights (under paragraph (d)(4) of this section), such action may only be taken in a floodway or coastal high hazard area if:

- (i) Such site is the only practicable alternative; and
- (ii) Harm to and within the floodplain is minimized.

(6) In addition to standards (d)(1) through (d)(5) of this section, no action may be taken if it is inconsistent with the criteria of the National Flood Insurance Program (44 CFR part 59 *et seq.*) or any more restrictive Federal, State or local floodplain management standards.

(7) New construction and substantial improvement of structures shall be elevated on open works (walls, columns,

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piers, piles, etc.) rather than on fill, in all cases in coastal high hazard areas and elsewhere, where practicable.

(8) To minimize the effect of floods on human health, safety and welfare, the Agency shall:

(i) Where appropriate, integrate all of its proposed actions in floodplains into existing flood warning and preparedness plans and ensure that available flood warning time is reflected;

(ii) Facilitate adequate access and egress to and from the site of the proposed action; and

(iii) Give special consideration to the unique hazard potential in flash flood, rapid-rise or tsunami areas.

(9) In the replacement of building contents, materials and equipment, the Regional Administrator shall require as appropriate, flood proofing and/or elevation of the building and/or elimination of such future losses by relocation of those building contents, materials, and equipment outside or above the floodplain as established by §9.7(c).

(e) *Restore and preserve.* (1) For any action taken by the Agency which affects the floodplain or wetland and which has resulted in, or will result in, harm to the floodplain or wetland, the Agency shall act to restore and preserve the natural and beneficial values served by floodplains and wetlands.

(2) Where floodplain or wetland values have been degraded by the proposed action, the Agency shall identify, evaluate, and implement measures to restore the values.

(3) If an action will result in harm to or within the floodplain or wetland, the Agency shall design or modify the action to preserve as much of the natural and beneficial floodplain and wetland values as is possible.

[45 FR 59526, Sept. 9, 1980, as amended at 46 FR 51752, Oct. 22, 1981; 48 FR 44543, Sept. 29, 1983; 49 FR 33879, Aug. 27, 1984; 49 FR 35584, Sept. 10, 1984; 50 FR 40006, Oct. 1, 1985; 89 FR 57044, July 11, 2024]

§9.12 Final public notice.

If the Agency decides to take an action in or affecting a floodplain or wetland, it shall provide the public with a statement of its final decision and shall explain the relevant factors considered by the Agency in making this determination.

(a) In addition, those sent notices under §9.8 shall also be provided the final notice.

(b) For actions for which an environmental impact statement is being prepared, the FEIS is adequate to constitute final notice in all cases except where:

(1) Significant modifications are made in the FEIS after its initial publication;

(2) Significant modifications are made in the development plan for the proposed action; or

(3) Significant new information becomes available in the interim between issuance of the FEIS and implementation of the proposed action.

If any of these situations develop, the Agency shall prepare a separate final notice that contains the contents of paragraph (e) of this section and shall make it available to those who received the FEIS. A minimum of 15 days shall, without good cause shown, be allowed for comment on the final notice.

(c) For actions for which an environmental assessment was prepared, the Notice of No Significant Impact is adequate to constitute final public notice, if it includes the information required under paragraph (e) of this section.

(d)(1) For all other actions, the finding shall be made in a document separate from those described in paragraphs (a), (b), and (c) of this section. Based on an assessment of the following factors, the requirement for final notice may be met in a cumulative manner:

(i) Scale of the action;

(ii) Potential for controversy;

(iii) Degree of public need;

(iv) Number of affected agencies and individuals;

(v) Its anticipated potential impact; and

(vi) Similarity of the actions, i.e., to the extent that they are susceptible of common descriptions and assessments.

(2) When a damaged structure or facility is already being repaired by the State or local government at the time of the project application, the requirements of Steps 2 and 7 (§9.8 and this section) may be met by a single notice. Such notice shall contain all the information required by both sections.

(e) The final notice shall include the following:

(1) A statement of why the proposed action must be located in an area affecting or affected by a floodplain or a wetland;

(2) A description of all significant facts considered in making this determination;

(3) A list of the alternatives considered;

(4) A statement indicating whether the action conforms to applicable state and local floodplain protection standards;

(5) A statement indicating how the action affects or is affected by the floodplain and/or wetland, and how mitigation is to be achieved;

(6) Identification of the responsible official or organization for implementation and monitoring of the proposed action, and from whom further information can be obtained; and

(7) A map of the area or a statement that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information.

(f) After providing the final notice, the Agency shall, without good cause shown, wait at least 15 days before carrying out the action.

[45 FR 59526, Sept. 9, 1980, as amended at 48 FR 29318, June 24, 1983; 89 FR 57045, July 11, 2024]

§9.13 Particular types of temporary housing.

(a) This section sets forth the procedures whereby the Agency will provide certain specified types of temporary housing at a private, commercial, or group site.

(b) Prior to providing the temporary housing described in paragraph (a) of this section, the Agency shall comply with the provisions of this section. For temporary housing not enumerated above, the full 8-step process (see §9.6) applies.

(c) The actions described in paragraph (a) of this section are subject to the following decision-making process:

(1) The temporary housing action shall be evaluated in accordance with the provisions of §9.7 to determine if it

is in or affects the 1 percent annual chance (base) floodplain or wetland.

(2) No temporary housing unit may be placed on a site in a floodway or coastal high hazard area.

(3) An individual or family shall not be housed in the 1 percent annual chance (base) floodplain or wetland unless the Regional Administrator has complied with the provisions of §9.9 to determine that such site is the only practicable alternative. The following factors shall be substituted for the factors in §9.9(c) and (e)(2) through (4):

(i) Speedy provision of temporary housing;

(ii) Potential flood risk to the temporary housing occupant;

(iii) Cost effectiveness;

(iv) Social and neighborhood patterns;

(v) Timely availability of other housing resources; and

(vi) Potential harm to the floodplain or wetland.

(4) For temporary housing units at group sites, Step 4 of the 8-step process shall be applied in accordance with §9.10.

(5) An individual or family shall not be housed in a floodplain or wetland (except in existing resources) unless the Regional Administrator has complied with the provisions of §9.11 to minimize harm to and within floodplains and wetlands. The following provisions shall be substituted for the provisions of §9.11(d) for temporary housing units:

(i) No temporary housing unit may be placed unless it is elevated to the fullest extent practicable up to the base flood elevation and adequately anchored.

(ii) No temporary housing unit may be placed if such placement is inconsistent with the criteria of the NFIP (44 CFR parts 59 and 60) or any more restrictive Federal, State, or local floodplain management standard. Such standards may require elevation to the base flood elevation in the absence of a variance.

(iii) Temporary housing units shall be elevated on open works (walls, columns, piers, piles, etc.) rather than on fill where practicable.

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(iv) To minimize the effect of floods on human health, safety and welfare, the Agency shall:

(A) Where appropriate, integrate all of its proposed actions in placing temporary housing units for temporary housing in floodplains into existing flood warning or preparedness plans and ensure that available flood warning time is reflected;

(B) Provide adequate access and egress to and from the proposed site of the temporary housing unit; and

(C) Give special consideration to the unique hazard potential in flash flood and rapid-rise areas.

(6) FEMA shall comply with Step 2 Early Public Notice (§9.8(c)) and Step 7 Final Public Notice (§9.12). In providing these notices, the emergency nature of temporary housing shall be taken into account.

(7) FEMA shall carry out the actions in accordance with Step 8, ensuring the requirements of this section and the decision-making process are fully integrated into the provision of temporary housing.

(d) The following applies to the permanent installation of a temporary housing unit as part of a sale or disposal of temporary housing:

(1) FEMA shall not permanently install temporary housing units in floodways or coastal high hazard areas. FEMA shall not permanently install a temporary housing unit in floodplains as established by 9.7(c) or wetlands unless there is full compliance with the 8-step process. Given the vulnerability of temporary housing units to flooding, a rejection of a non-floodplain location alternative and of the no-action alternative shall be based on:

(i) A compelling need of the family or individual to buy a temporary housing unit for permanent housing; and

(ii) A compelling requirement to permanently install the unit in a floodplain.

(2) FEMA shall not permanently install temporary housing units in the floodplain as established by §9.7(c) unless they are or will be elevated at least to the elevation of the floodplain as established by §9.7(c).

(3) The Regional Administrator shall notify FEMA Resilience of each instance where a floodplain location has

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been found to be the only practicable alternative for permanent installation of a temporary housing unit.

[45 FR 59526, Sept. 9, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 49 FR 35584, Sept. 10, 1984; 50 FR 40006, Oct. 1, 1985; 89 FR 57045, July 11, 2024]

§ 9.14 Disposal of Agency property.

(a) This section sets forth the procedures whereby the Agency shall dispose of property.

(b) Prior to its disposal by sale, lease or other means of disposal, property proposed to be disposed of by the Agency shall be reviewed according to the decision-making process set out in §9.6 of this part, as follows:

(1) The property shall be evaluated in accordance with the provisions of §9.7 to determine if it affects or is affected by a floodplain or wetland;

(2) The public shall be notified of the proposal and involved in the decision-making process in accordance with the provisions of §9.8;

(3) Practicable alternatives to disposal shall be evaluated in accordance with the provisions of §9.9. For disposals, this evaluation shall focus on alternative actions (conveyance for an alternative use that is more consistent with the floodplain management and wetland protection policies set out in §9.2 than the one proposed, e.g., open space use for park or recreational purposes rather than high intensity uses), and on the “no action” option (retain the property);

(4) Identify the potential impacts and support of floodplain and wetland development associated with the disposal of the property in accordance with §9.10;

(5) Identify the steps necessary to minimize, restore, preserve and enhance in accordance with §9.11. For disposals, this analysis shall address all four of these components of mitigation where unimproved property is involved, but shall focus on minimization through elevation or floodproofing and restoration of natural values where improved property is involved;

(6) Reevaluate the proposal to dispose of the property in light of its exposure to the flood hazard and its natural values-related impacts, in accordance with §9.9. This analysis shall focus on

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whether it is practicable in light of the findings from §§9.10 and 9.11 to dispose of the property, or whether it must be retained. If it is determined that it is practicable to dispose of the property, this analysis shall identify the practicable alternative that best achieves the Agency's mitigation responsibility.

(7) To the extent that it would decrease the flood hazard to lives and property, the Agency shall, wherever practicable, dispose of the properties according to the following priorities:

(i) Properties located outside the floodplain;

(ii) Properties located inside the floodplain but outside of the floodway and the coastal high hazard area; and

(iii) Properties located in a floodway, regulatory floodway, or coastal high hazard area.

(8) The Agency shall prepare and provide the public with a finding and public explanation in accordance with §9.12.

(9) The Agency shall ensure that the applicable mitigation requirements are fully implemented in accordance with §9.11(c).

(c) At the time of disposal, for all disposed property, the Agency shall reference in the conveyance uses that are restricted under existing Federal, State and local floodplain management and wetland protection standards relating to flood hazards and floodplain and wetland values.

[45 FR 59526, Sept. 9, 1980, as amended at 89 FR 57045, July 11, 2024]

§9.15 Planning programs affecting land use.

The Agency shall take floodplain management into account when formulating or evaluating any water and land use plans. No plan may be approved unless it:

(a) Reflects consideration of flood hazards and floodplain management and wetlands protection; and

(b) Prescribes planning procedures to implement the policies and requirements of the Orders and this regulation.

§9.16 Guidance for applicants.

(a) The Agency shall encourage and provide adequate guidance to applicants for agency assistance to evaluate

the effects of their plans and proposals in or affecting floodplains and wetlands.

(b) This shall be accomplished primarily through amendment of all Agency instructions to applicants, and also through contact made by agency staff during the normal course of their activities, to fully inform prospective applicants of:

(1) The Agency's policy on floodplain management and wetlands protection as set out in §9.2;

(2) The decision-making process to be used by the Agency in making the determination of whether to take an action in or affecting floodplains or wetlands as set out in §9.6;

(3) The practicability analysis as set out in §9.9;

(4) The mitigation responsibilities as set out in §9.11;

(5) The public notice and involvement process as set out in §§9.8 and 9.12; and

(6) The supplemental requirements applicable to applications for the lease or other disposal of Agency owned properties set out in §9.14.

(c) Guidance to applicants shall be provided, where possible, prior to the time of application in order to minimize potential delays in the Agency's processing of the application due to failure of applicants to follow the provisions in this part.

[45 FR 59526, Sept. 9, 1980, as amended at 89 FR 57046, July 11, 2024]

§9.17 Instructions to applicants.

(a) *Purpose.* In accordance with Executive Orders 11988, as amended, and 11990, the Federal executive agencies must respond to a number of floodplain management and wetland protection responsibilities before carrying out any of their activities, including the provision of Federal financial and technical assistance. This section provides notice to applicants for Agency assistance of both the criteria that FEMA is required to follow, and the applicants' responsibilities under this part.

(b) *Responsibilities of applicants.* Based upon the guidance provided by the Agency under §9.16, the guidance included in the U.S. Water Resources Council's Guidelines for Implementing

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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 based upon the provisions of the Orders and this part, applicants for Agency assistance shall recognize and reflect in their application:

(1) The Agency's policy on floodplain management and wetlands protection as set out in § 9.2;

(2) The decision-making process to be used by the Agency in making the determination of whether to provide the requested assistance as set out in § 9.6;

(3) The practicability analysis as set out in § 9.9;

(4) The mitigation responsibilities as set out in § 9.11;

(5) The public notice and involvement process as set out in §§ 9.8 and 9.12; and

(6) The supplemental requirements for application for the lease or other disposal of Agency-owned properties, as set out in § 9.13.

(c) *Provision of supporting information.* Applicants for Agency assistance may be required to provide supporting information relative to the various responsibilities set out in paragraph (b) of this section as a prerequisite to the approval of their applications.

(d) *Approval of applicants.* Applications for Agency assistance shall be reviewed for compliance with the provisions in this part in addition to the Agency's other approval criteria.

[45 FR 59526, Sept. 9, 1980, as amended at 89 FR 57046, July 11, 2024]

§ 9.18 Responsibilities.

(a) *Regional Administrators' responsibilities.* Regional Administrators shall, for all actions falling within their respective jurisdictions:

(1) Implement the requirements of the Orders and this part. Under §§ 9.2 and 9.6 through 9.13 and 9.15 where a direction is given to the Agency, it is the responsibility of the Regional Administrator.

(2) Consult with the Chief Counsel regarding any question of interpretation concerning this regulation or the Orders.

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(b) The Heads of the Offices, Directorates and Administrations of FEMA shall:

(1) Implement the requirements of the Orders and this regulation. When a decision of a Regional Administrator relating to disaster assistance is appealed, FEMA Resilience may make determinations under this part on behalf of the Agency.

(2) Prepare and submit to the Office of Chief Counsel reports to the Office of Management and Budget in accordance with section 2(b) of Executive Order 11988, as amended, and section 3 of Executive Order 11990. If a proposed action is to be located in a floodplain or wetland, any requests to the Office of Management and Budget for new authorizations or appropriations shall be accompanied by a report indicating whether the proposed action is in accord with the Orders and these regulations.

[45 FR 59526, Sept. 9, 1980, as amended at 49 FR 33879, Aug. 27, 1984; 74 FR 15336, Apr. 3, 2009; 89 FR 57046, July 11, 2024]

PART 10 [RESERVED]

PART 11—CLAIMS

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