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PART 55—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

Contents

1	PART 55—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS	1
2		
3		
4	PART 55—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS	1
5	Subpart A—General	2
6	§55.1 Purpose.....	2
7	§55.2 Terminology.....	2
8	§55.3 Assignment of responsibilities.....	5
9	§55.4 Notification of floodplain hazard.....	7
10	§55.5 Flood Insurance.....	7
11	§55.6 Complying with this part.....	8
12	Subpart B—Application of Executive Orders on Floodplain Management and	
13	Protection of Wetlands	9
14	§55.7 Identifying the FFRMS Floodplain.....	9
15	§55.8 Limitations on HUD assistance in floodplains.....	10
16	§55.9 Identifying wetlands.....	12
17	§55.10 Limitations on HUD Assistance in Wetlands.....	12
18	§55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.....	13
19	§55.13 Inapplicability of 8-Step decisionmaking process to certain categories of	
20	proposed actions.....	14
21	§ 55.14 Modified 5-step decisionmaking process for certain categories of proposed	
22	actions.....	15
23	§55.16 Applicability of Subpart C decisionmaking process.....	16
24	Subpart C—Procedures for Making Determinations on Floodplain Management and	
25	Protection of Wetlands	17
26	§55.20 Decision making process.....	17
27	§55.21 Alternate processing for existing nonconforming sites.....	24
28	§55.22 Conveyance restrictions for the disposition of multifamily real property...24	
29	§55.23 [Reserved].....	25
30	§55.26 Adoption of another agency's review under the executive orders.....	25

DRAFT

1
2
3
4
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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- 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 the requirements of 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 HUD-assisted or HUD-insured actions that are subject to potential harm by location in floodplains or wetlands. Covered actions include the proposed acquisition, construction, demolition, improvement, disposition, financing, and use of properties located in floodplains or wetlands 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.

[59 FR 19107, Apr. 21, 1994, as amended at 78 FR 68728, Nov. 15, 2013]

§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 (80 FR 64008, October 22, 2015), issued by the Water Resources Council; 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:

DRAFT

1 (1) *Coastal high hazard area* means the area subject to high velocity waters, including but
2 not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance
3 Rate Map (FIRM) or Flood Insurance Study (FIS) under FEMA regulations, or according to best
4 available information. (See § 55.8(b) for appropriate data sources.)

5 (2) *Compensatory mitigation* means the restoration (reestablishment or rehabilitation),
6 establishment (creation), enhancement, and/or, in certain circumstances, preservation of
7 aquatic resources for the purposes of offsetting unavoidable adverse impacts that remain after
8 all appropriate and practicable avoidance and minimization have been achieved.

9 Examples include, but are not limited to:

10 (i) *Permittee-responsible mitigation*: On-site or off-site mitigation undertaken by the holder
11 of a wetlands permit under section 404 of the Clean Water Act (or an authorized agent or
12 contractor), for which the permittee retains full responsibility;

13 (ii) *Mitigation banking*: A permittee's purchase of credits from a wetlands mitigation bank,
14 comprising wetlands that have been set aside to compensate for conversions of other
15 wetlands; the mitigation obligation is transferred to the sponsor of the mitigation bank; and

16 (iii) *In-lieu fee mitigation*: A permittee's provision of funds to an in-lieu fee sponsor (public
17 agency or nonprofit organization) that builds and maintains a mitigation site, often after the
18 permitted adverse wetland impacts have occurred; the mitigation obligation is transferred to
19 the in-lieu fee sponsor.

20 (3)(i) *Critical action* means any activity for which even a slight chance of flooding would be
21 too great, because such flooding might result in loss of life, injury to persons, or damage to
22 property. Critical actions include activities that create, maintain or extend the useful life of
23 those structures or facilities that:

24 (A) Produce, use or store highly volatile, flammable, explosive, toxic or water-reactive
25 materials;

26 (B) Provide essential and irreplaceable records or utility or emergency services that may
27 become lost or inoperative during flood and storm events (e.g., community stormwater
28 management infrastructure, water treatment plants, data storage centers, generating plants,
29 principal utility lines, emergency operations centers including fire and police stations, and
30 roadways providing sole egress from flood-prone areas); or

31 (C) Are likely to contain occupants who may not be sufficiently mobile to avoid loss of life
32 or injury during flood or storm events, e.g., persons who reside in hospitals, nursing homes,
33 convalescent homes, intermediate care facilities, board and care facilities, and retirement
34 service centers. Housing for independent living for the elderly is not considered a critical action.

DRAFT

1 (ii) Critical actions shall not be approved in floodways or coastal high hazard areas.

2 (4) *Federal Flood Risk Management Standard (FFRMS) floodplain* means the floodplain as
3 defined by Executive Order 13690 and Water Resources Council Interagency Guidelines and
4 further described as applied to HUD-assisted activities by § 55.7 of this part.

5 (5) *500-year floodplain* means the area, including the base flood elevation, subject to
6 inundation from a flood having a 0.2 percent chance or greater of being equaled or exceeded in
7 any given year. (See §55.7 for appropriate data sources.)

8 (6) *Floodway* means that portion of the floodplain which is effective in carrying flow, where
9 the flood hazard is generally the greatest, and where water depths and velocities are the
10 highest. The term “floodway” as used here is consistent with “regulatory floodways” as
11 identified by FEMA. (See § 55.8(b) for appropriate data sources.)

12 (7) *Functionally dependent use* means a land use that must necessarily be conducted in
13 close proximity to water as defined in Federal Emergency Management Agency regulations at
14 44 CFR 59.1.

15 (8) *High hazard area* means a floodway or a coastal high hazard area.

16 (9) *Impervious surface area* means an improved surface that measurably reduces the rate
17 of water infiltration below the rate that would otherwise be provided by the soil present in a
18 location prior to improvement, based on the soil type identified either by the Natural Resource
19 Conservation Service Soil Survey or geotechnical study. Impervious surfaces include, but are
20 not limited to, unperforated concrete or asphalt ground cover, unvegetated roofing materials,
21 and other similar treatments that impede infiltration.

22 (x) *Limit of Moderate Wave Action (LimWA)* means the portion of coastal Zone AE where
23 wave heights can be between 1.5 and 3 feet during a base flood event, subjecting properties to
24 damage from waves and storm surge.

25 (10) *100-year floodplain* means the floodplain of concern for this part and is the area
26 subject to inundation from a flood having a one percent or greater chance of being equaled or
27 exceeded in any given year. (See §55.7 for appropriate data sources.)

28 (11) *Structure* means a walled and roofed building, as defined in Federal Emergency
29 Management Agency regulations at 44 CFR 59.1.

30 (12) *Substantial damage* means damage of any origin sustained by a structure whereby the
31 cost of restoring the structure to its before damaged condition would equal or exceed 50
32 percent of the market value of the structure before the damage occurred.

33 (13)(i) *Substantial improvement* means either:

DRAFT

1 (A) Any repair, reconstruction, modernization or improvement of a structure, the cost of
2 which equals or exceeds 50 percent of the market value of the structure either:

3 (1) Before the improvement or repair is started; or

4 (2) If the structure has been damaged, and is being restored, before the damage occurred;
5 or

6 (B) Any repair, reconstruction, modernization or improvement of a structure that results in
7 an increase of more than twenty percent in the number of dwelling units in a residential project
8 or in the average peak number of customers and employees likely to be on-site at any one time
9 for a commercial or industrial project.

10 (ii) *Substantial improvement* may not be defined to include either:

11 (A) Any project for improvement of a structure to comply with existing state or local health,
12 sanitary or safety code specifications that is solely necessary to assure safe living conditions, or

13 (B) Any alteration of a structure listed on the National Register of Historical Places or on a
14 State Inventory of Historic Places.

15 (iii) Structural repairs, reconstruction, or improvements not meeting this definition are
16 considered "minor improvements".

17 (14) *Wetlands* means those areas that are inundated by surface or ground water with a
18 frequency sufficient to support, and under normal circumstances does or would support, a
19 prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil
20 conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs,
21 and similar areas such as sloughs, prairie potholes, wet meadows, river overflows, mud flats,
22 and natural ponds. This definition includes those wetland areas separated from their natural
23 supply of water as a result of activities such as the construction of structural flood protection
24 methods or solid-fill road beds and activities such as mineral extraction and navigation
25 improvements. This definition includes both wetlands subject to and those not subject to
26 section 404 of the Clean Water Act as well as constructed wetlands. It does not include ponds
27 that do not conform to the definition above, or deepwater aquatic habitats such as streams,
28 creeks, and rivers. (See § 55.9 for appropriate data sources.)

29 [59 FR 19107, Apr. 21, 1994, as amended at 78 FR 68729, Nov. 15, 2013]

30 **§55.3 Assignment of responsibilities.**

31 (a) The implementation of Executive Orders 11988 and 11990 under this part shall be
32 conducted by HUD for Department-administered programs subject to environmental review
33 under 24 CFR part 50 and by authorized responsible entities that are responsible for
34 environmental review under 24 CFR part 58.

DRAFT

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

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

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

6 (2) In performing these responsibilities, the Assistant Secretary for CPD shall make
7 pertinent policy determinations in cooperation with appropriate program offices and provide
8 necessary assistance, training, publications, and procedural guidance.

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

11 (1) Ensure compliance with this part for all actions under their jurisdiction that are
12 proposed to be conducted, supported, or permitted in a floodplain or wetland, including taking
13 full responsibility for all decisions made pursuant to § 55.20 for environmental reviews
14 completed pursuant to 24 CFR part 50;

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

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

19 (4) Incorporate in departmental regulations, handbooks, and project and site standards
20 those criteria, standards, and procedures related to compliance with this part. These criteria,
21 standards, and procedures may exceed the requirements established in this part.

22 (d) *Responsible Entity Certifying Officer.* Certifying Officers of responsible entities
23 administering or reviewing activities subject to 24 CFR part 58 shall comply with this part in
24 carrying out HUD-assisted programs. Certifying Officers shall:

25 (1) Take full responsibility for all decisions made pursuant to § 55.20; and

26 (2) Monitor approved actions and ensure that any prescribed mitigation is implemented.

27 (e) *Grantees and Applicants.* Grantees and Applicants that are not acting as responsible
28 entities shall:

29 (1) Supply HUD (or the responsible entity authorized by 24 CFR part 58) with all available,
30 relevant information necessary for HUD (or the responsible entity) to perform the compliance
31 required by this part;

DRAFT

1 (2) Implement mitigating measures required by HUD (or the responsible entity authorized
2 by 24 CFR part 58) under this part or select alternate eligible property; and

3 (3) Monitor approved actions and ensure that any prescribed mitigation is implemented.

4 (f) *Third party providers.* Consultants and other parties to the environmental review process
5 may prepare maps, studies (e.g., hydraulic and hydrologic studies), and reports to support
6 compliance with this part, including identification of floodplains and wetlands and development
7 of alternatives or minimization measures. The following responsibilities, however, may not be
8 delegated to the third party provider:

9 (i) Receipt of public or agency comments;

10 (ii) Selection or rejection of alternatives analyzed in Step 3 of the 8-Step Process;

11 (iii) Selection or rejection of minimization measures analyzed in Step 5 of the 8-Step
12 Process;

13 (iv) Determination whether avoidance of floodplain or wetland impacts, according to the
14 purpose of Executive Orders 11988 and 11990, is or is not practicable.

15 [59 FR 19107, Apr. 21, 1994, as amended at 78 FR 68730, Nov. 15, 2013]

16 **§55.4 Notification of floodplain hazard.**

17 For actions in the FFRMS floodplain (as defined in § 55.7), HUD or the Responsible Entity
18 must ensure that any private party participating in the transaction and any current or
19 prospective tenant is notified of the hazards of the floodplain location, including but not limited
20 to the approximate risk of flooding, status of flood-related infrastructure impacting the site
21 including dams and levees, potential cost of flood insurance, ingress and egress or evacuation
22 routes, and other relevant information such as available emergency notification resources.
23 HUD encourages a proactive and systematic approach to notification of floodplain risks.

24 [59 FR 19107, Apr. 21, 1994, as amended at 78 FR 68734, Nov. 15, 2013]

25 **§55.5 Flood Insurance.**

26 (a)(1) As required by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128) and
27 the National Flood Insurance Reform Act of 1994 (Pub.L. 103-325, 108 Stat. 2160), when HUD
28 financial assistance (including mortgage insurance) is proposed for acquisition or construction
29 purposes in any “area having special flood hazards” (a flood zone designated by the Federal
30 Emergency Management Agency (FEMA)), structures included in the assisted project must be
31 covered by flood insurance in an amount at least equal to the project cost, the outstanding
32 principal balance of the HUD-insured loan, or the maximum limit of coverage available under
33 the National Flood Insurance Program, whichever is less. HUD strongly encourages that flood

DRAFT

1 insurance be obtained and maintained for all HUD-assisted structures in the FFRMS floodplain,
2 sites that have previously flooded, or in close proximity to a floodplain. Under section 202(a) of
3 the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), proposed such assistance shall not
4 be approved in communities identified by FEMA as eligible for flood insurance but which are
5 not participating in the National Flood Insurance Program. This prohibition only applies to
6 proposed HUD financial assistance in a FEMA-designated area of special flood hazard one year
7 after the community has been formally notified by FEMA of the designation of the affected
8 area. This requirement is not applicable to HUD financial assistance in the form of formula
9 grants to states, including financial assistance under the State-administered CDBG Program (24
10 CFR part 570, subpart I) and, Emergency Shelter Grant amounts allocated to States (24 CFR
11 parts 575 and 576), and HOME funds provided to a state under Title II of the Cranston-Gonzalez
12 National Affordable Housing Act (42 U.S.C. 12701-12839).

13 (2) Under section 582 of the National Flood Insurance Reform Act of 1994 (42 U.S.C.
14 5154a), HUD disaster assistance that is made available in a special flood hazard area may not
15 be used to make a payment (including any loan assistance payment) to a person for repair,
16 replacement, or restoration of damage to any personal, residential, or commercial property if:

17 (i) The person had previously received Federal flood disaster assistance conditioned on
18 obtaining and maintaining flood insurance; and

19 (ii) The person failed to obtain and maintain the flood insurance.

20 (b) HUD or the Responsible Entity may impose flood insurance requirements that exceed
21 the minimums established by the National Flood Insurance Program, state, locality, and/or
22 Tribe. HUD and Responsible Entities have discretion to require that flood insurance be
23 maintained for structures outside of the FEMA-mapped floodplain and/or that structures be
24 insured at a higher amount than otherwise required.

25 **§55.6 Complying with this part.**

26 (a) *Process.* The process to comply with this part is as follows:

27 (1) HUD or the Responsible Entity shall determine whether compliance with this part is
28 required. Refer to § 55.12 for a list of activities that do not require further compliance with this
29 part beyond the provisions of § 55.6(c).

30 (2) HUD or the Responsible Entity shall refer to § 55.8 to determine whether the proposed
31 action is eligible for HUD assistance or if it must be rejected as proposed.

32 (3) If the project requires compliance under this part and is not prohibited by § 55.8, HUD or the
33 Responsible Entity shall refer to § 55.13 to determine whether the 8-step decisionmaking
34 process is required. If an exception in that section applies, the proposed project may proceed
35 without further analysis under this part.

DRAFT

1 (4) HUD or the Responsible Entity shall refer to § 55.10 to determine whether an 8-step
2 decisionmaking process for wetland protection is required or whether best practices to
3 minimize potential indirect impacts to wetlands should be pursued.

4 (5) HUD or the Responsible Entity shall determine whether an exception applies that would
5 allow them to complete an abbreviated decisionmaking process pursuant to § 55.14.

6 (6) HUD or the Responsible Entity shall follow the decisionmaking process described in § 55.20,
7 eliminating any steps as permitted under § 55.14.

8 (b) *Decisionmaking.* HUD or the Responsible Entity shall determine whether to approve the
9 action as proposed, approve the action with modifications or at an alternative site, or reject the
10 proposed action, based on its analysis of the proposed risks and impacts. HUD or the
11 Responsible Entity has discretion to reject any project where it determines that the level of
12 flood hazard is incompatible with the proposed use of the site or that the extent of impacts to
13 wetlands or to the beneficial function of floodplains is not acceptable, regardless of whether it
14 would otherwise be acceptable under this part.

15 (c) *Other requirements.* Refer to §§ 55.4 and 55.5 to determine whether the proposed action may
16 require notifications and/or flood insurance. Actions that do not require full compliance under
17 this part may still trigger notification and flood insurance requirements.

18 (d) *Documentation.* HUD or the Responsible Entity shall require that all of the analysis required
19 under this part, including applicable exceptions and all required steps described in § 55.20, be
20 documented in the environmental review record.

21 **Subpart B—Application of Executive Orders on Floodplain** 22 **Management and Protection of Wetlands**

23 **§55.7 Identifying the FFRMS Floodplain.**

24 (a) HUD or the Responsible Entity shall determine all compliance with the floodplain review
25 requirements of this part based on the FFRMS floodplain.

26 (b) For a non-critical action, HUD or the Responsible Entity shall define the FFRMS floodplain
27 using the following process:

28 (i) If comprehensive, HUD-approved maps of the jurisdiction have been developed using
29 a climate-informed science approach (CISA), those areas designated as having an
30 elevated flood risk during the anticipated life of the project; or

31 (ii) If CISA data as described above is not available but FEMA has defined the 500-year
32 floodplain, those areas that FEMA has designated as within the 100- or 500-year
33 floodplain; or

DRAFT

1 (iii) If neither CISA nor FEMA-mapped 500-year floodplain data is available, those areas
2 located less than two feet above the 100-year floodplain as established by the effective
3 FIRM or FIS or – if available – FEMA-provided preliminary or pending maps or studies or
4 advisory base flood elevations.

5 (iv) The latest of these resources shall be used. However, a base flood elevation based
6 on CISA data or an interim or preliminary FEMA map cannot be used if it is lower than
7 the current FIRM or FIS.

8 (c) For a critical action, the FFRMS floodplain is either:

9 (i) If comprehensive, HUD-approved CISA maps of the jurisdiction have been developed,
10 those areas designated as having an elevated flood risk – as determined based on the
11 criticality of the action – during the anticipated life of the project; or

12 (ii) If CISA data as described above is not available, an area either within the 500-year
13 floodplain or less than three feet above the 100-year floodplain. The larger floodplain
14 and higher elevation must be applied where the 500-year floodplain is mapped.

15 (d) If FEMA information is unavailable or insufficiently detailed and CISA data is not available,
16 other Federal, state, local, or tribal data shall be used as “best available information.” If best
17 available information is based only on past flooding and does not consider future flood risk:

18 (i) For non-critical actions, the FFRMS floodplain includes those sites less than two feet
19 above the 100-year floodplain based on best available information.

20 (ii) For critical actions, the FFRMS floodplain is either the 500-year floodplain based on
21 best available information or areas less than three feet above the 100-year floodplain
22 based on best available information.

23 (e) When preparing an Environmental Impact Statement (EIS), an analysis of the best available,
24 actionable climate science, as determined by HUD or the responsible entity, must be performed
25 to define the FFRMS floodplain. These sources may supplement the FIRM or ABFE in order to
26 better minimize impacts to projects or to elevate or floodproof structures above the risk
27 adjusted floodplain. These sources may not be used as a basis for a lower elevation than
28 otherwise required under this part.

29 **§55.8 Limitations on HUD assistance in floodplains.**

30 (a) No HUD financial assistance (including mortgage insurance) may be approved with
31 respect to:

32 (1) Any action located in a floodway unless:

33 (i) An exception listed in §55.12 applies; or

DRAFT

1 (ii) The proposed project site does not include any buildings or improvements that
2 modify or occupy the floodway except for the following, when a permanent covenant or
3 comparable restriction will preserve all onsite FFRMS floodplain and/or wetland areas from
4 future development or improvements beyond maintenance of existing compatible uses:

- 5 (A) Functionally dependent uses (as defined in § 55.2(b)(x));
- 6 (B) Utilities and improvements that are compatible with preserving floodplain
7 function (such as retention ponds and underground utility lines);
- 8 (C) De minimis improvements (such as landscaping improvements, sports
9 courts, or trails), including minimal ground disturbance or placement of
10 impervious surface area to ensure accessibility where this is permitted by
11 local ordinances and does not increase flood risk to the property; or
- 12 (D) Buildings and improvements that will be removed as part of the proposed
13 action.

14 (2) Any critical action located in a coastal high hazard area or LimWA; or

15 (3) Any noncritical action located in a Coastal High Hazard Area or LimWA, unless the
16 action is a functionally dependent use, is limited to existing structures or improvements), or
17 reconstruction following destruction caused by a disaster. If the action is not a functionally
18 dependent use, the action must be designed for location in a Coastal High Hazard Area. An
19 action will be considered designed for a Coastal High Hazard Area if:

20 (i) In the case of reconstruction following destruction caused by a disaster, substantial
21 improvement, or rehabilitation of substantial damage, the work meets the current standards
22 for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property
23 Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

24 (ii) In the case of existing construction (including any minor improvements that are not
25 substantial improvement or rehabilitation of substantial damage):

26 (A) The work met FEMA elevation and construction standards for a coastal high hazard
27 area (or if such a zone or such standards were not designated, the 100-year floodplain)
28 applicable at the time the original improvements were constructed; or

29 (B) If the original improvements were constructed before FEMA standards for the 100-year
30 floodplain became effective or before FEMA designated the location of the action as within the
31 100-year floodplain, the work would meet at least the earliest FEMA standards for construction
32 in the 100-year floodplain.

33 (b) All determinations made pursuant to this section shall be based on the effective FIRM
34 or FIS unless FEMA has provided more current information. When FEMA provides interim flood
35 hazard data, such as Advisory Base Flood Elevations (ABFE) or preliminary maps and studies,
36 HUD or the responsible entity shall use the latest of these sources. However, a base flood

DRAFT

1 elevation from an interim or preliminary source cannot be used if it is lower than the current
2 FIRM and FIS.

3 (c) HUD assistance for actions subject to §55.20 on structures designated by FEMA as
4 Severe Repetitive Loss (SRL) properties may be considered only if the proposed action includes
5 mitigation that will qualify the property for removal from the SRL list.

6 **§55.9 Identifying wetlands.**

7 The following process shall be followed in making the wetlands determination:

8 (a) HUD or the Responsible Entity shall determine whether the action involves new
9 construction that is located in a wetland.

10 (b) As primary screening, HUD or the responsible entity shall verify whether the project
11 area is located in proximity to wetlands identified on the National Wetlands Inventory (NWI) and
12 observe the site for visual indication of the presence of wetlands such as hydrology (water),
13 hydric soils, or wetland vegetation. Where the primary screening is inconclusive, potential
14 wetlands should be further evaluated using one or more of the following methods:

15 (i) Consultation with the Department of the Interior, Fish and Wildlife Service (FWS), for
16 information concerning the location, boundaries, scale, and classification of wetlands within the
17 area.

18 (ii) Reference to the Department of Agriculture, Natural Resources Conservation Service
19 (NRCS) National Soil Survey (NSS) and any State, local or Tribal information concerning the
20 location, boundaries, scale, and classification of wetlands within the action area and further site
21 study by the environmental review preparer with reference to Federal guidance on field
22 identification of the biological (rather than jurisdictional) characteristics of wetlands.

23 (iii) Evaluation by a qualified wetlands biologist.

24 **§55.10 Limitations on HUD Assistance in Wetlands.**

25 (a) When the proposed project includes construction activities (including grading,
26 clearing, draining, filling, diking, and impounding) that will have a direct impact to onsite
27 wetlands identified by the process described in (a), compliance with this part includes
28 completion of the 8-step process in § 55.20 to address wetland impacts.

29 (b) When the proposed project may indirectly affect on-site wetlands by modifying the
30 flow of stormwater, releasing pollutants, or otherwise changing conditions that contribute to
31 wetlands viability, the significance of these impacts must be evaluated and minimized through
32 best management practices, including obtaining a permanent covenant or comparable
33 restriction preserving any onsite wetlands. No further compliance with this part is required to
34 address wetlands impacts.

DRAFT

1 (c) When the proposed project may indirectly affect off-site wetlands as described
2 above, impacts should be minimized to the extent practicable. While this part does not require
3 further decisionmaking to address these effects under the authority of Executive Order 11990,
4 measures to address offsite wetlands impacts may be necessary to comply with related laws
5 and authorities including the Endangered Species Act or to address significant impacts under
6 the National Environmental Policy Act.

8 **§55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.**

9 This part shall not apply to the following categories of proposed HUD actions:

10 (a) HUD-assisted activities described in 24 CFR 58.34 and 58.35(b);

11 (b) HUD-assisted activities described in 24 CFR 50.19, except as otherwise indicated in
12 §50.19;

13 (c) The approval of financial assistance for restoring and preserving the natural and
14 beneficial functions and values of floodplains and wetlands, including through acquisition of
15 such floodplain and wetland property, but only if:

16 (1) The property is cleared of all existing structures and related improvements except
17 those which:

18 (i) Are directly related to the uses identified in paragraph (2);

19 (ii) Do not, as a result of the HUD-assisted activity, increase impervious surface area on the
20 property or modify existing wetland areas; and

21 (iii) Are designed to be compatible with the beneficial floodplain or wetland function of the
22 property.

23 Such improvements may include parks, playgrounds, recreation areas, and trails (but do
24 not include retention basins and other flood control measures, which require evaluation under
25 § 55.20);

26 (2) The property is dedicated for permanent use for flood control, wetland protection, park
27 land, or open space; and

28 (3) A permanent covenant or comparable restriction is placed on the property's continued
29 use to preserve the floodplain or wetland from future development.

30 (d) An action involving a repossession, receivership, foreclosure, or similar acquisition of
31 property to protect or enforce HUD's financial interests under previously approved loans,
32 grants, mortgage insurance, or other HUD assistance;

DRAFT

1 (e) Policy-level actions described at 24 CFR 50.16 that do not involve site-based decisions;

2 (f) A minor amendment to a previously approved action with no additional adverse impact
3 on or from a floodplain or wetland;

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

8 (j) Special projects directed to the removal of material and architectural barriers that
9 restrict the mobility of and accessibility to elderly and persons with disabilities;

10 [78 FR 68731, Nov. 15, 2013; 78 FR 74009, Dec. 10, 2013]

11 **§55.13 Inapplicability of 8-Step decisionmaking process to certain categories of proposed**
12 **actions.**

13 The decisionmaking process in §55.20 shall not apply to the following categories of
14 proposed actions:

15 (a) HUD's mortgage insurance actions and other financial assistance for the purchasing,
16 mortgaging or refinancing of existing one- to four-family properties in communities that are in
17 the Regular Program of the NFIP and in good standing (i.e., not suspended from program
18 eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action
19 and the property is not located in a floodway, Coastal High Hazard Area, or LimWA;

20 (b) Financial assistance for minor repairs or improvements on one- to four-family
21 properties that do not meet the thresholds for "substantial improvement" under §55.2(b)(13);

22 (c) HUD or a recipient's actions involving the disposition of individual HUD or recipient
23 held, one- to four-family properties;

24 (d) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573)
25 of loans that refinance existing loans and mortgages, where any new construction or
26 rehabilitation financed by the existing loan or mortgage has been completed prior to the filing
27 of an application under the program, and the refinancing will not allow further construction or
28 rehabilitation, nor result in any physical impacts or changes except for routine maintenance;
29 and

30 (e) The approval of financial assistance to lease units within an existing structure located
31 within the floodplain, but only if;

DRAFT

1 (1) The structure is located outside the floodway or Coastal High Hazard Area, and is in a
2 community that is in the Regular Program of the NFIP and in good standing (i.e., not suspended
3 from program eligibility or placed on probation under 44 CFR 59.24); and

4 (2) The project is not a critical action.

5 **§ 55.14 Modified 5-step decisionmaking process for certain categories of proposed**
6 **actions.**

7 The decisionmaking steps in §55.20(b), (c), and (g) (steps 2, 3, and 7) do not apply to the
8 following categories of proposed actions:

9 (a) HUD's or the recipient's actions involving the disposition of acquired multifamily
10 housing projects or "bulk sales" of HUD-acquired (or under part 58 of recipients') one- to four-
11 family properties in communities that are in the Regular Program of the NFIP and in good
12 standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR
13 59.24). For programs subject to part 58, this paragraph applies only to recipients' disposition
14 activities that are subject to review under part 58.

15 (b) HUD's actions under the National Housing Act (12 U.S.C. 1701) for the purchase or
16 refinancing of existing multifamily housing projects, hospitals, nursing homes, assisted living
17 facilities, board and care facilities, and intermediate care facilities, in communities that are in
18 good standing under the NFIP. For purposes of this paragraph, existing properties are those
19 which have been occupied for no fewer than three years prior to the date of HUD application.

20 (c) HUD's or the recipient's actions under any HUD program involving the repair,
21 rehabilitation, modernization, weatherization, or improvement of existing multifamily housing
22 projects, hospitals, nursing homes, assisted living facilities, board and care facilities,
23 intermediate care facilities, and one- to four-family properties, in communities that are in the
24 Regular Program of the National Flood Insurance Program (NFIP) and are in good standing,
25 provided that the number of units is not increased more than 20 percent, the action does not
26 involve a conversion from nonresidential to residential land use, the action does not meet the
27 thresholds for "substantial improvement" under §55.2(b)(13), and the footprint of the structure
28 and paved areas is not significantly increased. For purposes of this paragraph, existing
29 properties are those which have been occupied for no fewer than three years prior to the date
30 of HUD application.

31 (d) HUD's or the recipient's actions under any HUD program involving the repair,
32 rehabilitation, modernization, weatherization, or improvement of existing nonresidential
33 buildings and structures, in communities that are in the Regular Program of the NFIP and are in
34 good standing, provided that the action does not meet the thresholds for "substantial
35 improvement" under §55.2(b)(13) and that the footprint of the structure and paved areas is not
36 significantly increased.

DRAFT

1 (e) HUD’s or the recipient’s actions under any HUD program involving the repair,
 2 rehabilitation, or replacement of existing nonstructural improvements including but not limited
 3 to streets, curbs and gutters, drainage infrastructure, and water, sewer, electrical or other utility
 4 connections; where the total impervious surface area of the facility is increased by 20 percent
 5 or less.

6 **§55.16 Applicability of Subpart C decisionmaking process.**

7 The following table indicates the applicability, by location and type of action, of the
 8 decisionmaking process for implementing Executive Order 11988 and Executive Order 11990
 9 under subpart C of this part.

10 **TABLE 1**

Type of proposed action (new reviewable action or an amendment) ¹	Type of proposed action			
	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.	Critical actions not allowed.	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(b)(3).	Allowed if proposed noncritical action is processed under §55.20. ²	

11 ¹Under Executive Order 11990, the decisionmaking process in §55.20 only applies to
 12 Federal assistance for new construction in wetlands locations.

DRAFT

1 ²Or those paragraphs of §55.20 that are applicable to an action listed in § 55.14.

2 [78 FR 68730, Nov. 15, 2013]

3 **Subpart C—Procedures for Making Determinations on Floodplain** 4 **Management and Protection of Wetlands**

5 **§55.20 Decision making process.**

6 Except for actions covered by §55.14, the decisionmaking process for compliance with this
7 part contains eight steps, including public notices and an examination of practicable
8 alternatives when addressing floodplains and wetlands. Third parties may provide analysis and
9 information to support the decisionmaking process; however, final determinations for each
10 step, authorization of public notices, and receipt of public comments, are the responsibility of
11 HUD or the Responsible entity. The steps to be followed in the decisionmaking process are as
12 follows:

13 (a) *Step 1.* Using the processes described in §§ 55.7 and 55.9, determine whether the
14 proposed action is located in the FFRMS floodplain , or results in new construction in a wetland.
15 If the action (including areas required for ingress and egress not within the site boundary or
16 other integral components of the proposed action) does not occur in a floodplain or include
17 new construction in a wetland, then no further compliance with this part is required. Where the
18 proposed action would be located in the FFRMS floodplain and includes construction in a
19 wetland, these impacts should be evaluated together in a single 8-step decisionmaking process.
20 For proposed actions occurring in both a wetland and a floodplain, completion of the
21 decisionmaking process under §55.20 is required regardless of the issuance of a Section 404
22 permit. In such a case, the wetland will be considered among the primary natural and beneficial
23 functions and values of the floodplain.

24 (b) *Step 2.* Notify the public and agencies responsible for floodplain management or
25 wetlands protection at the earliest possible time of a proposal to consider an action in a FFRMS
26 floodplain or wetland and involve the affected and interested public and agencies in the
27 decisionmaking process.

28 (1) The public notices required by paragraphs (b) and (g) of this section may be combined
29 with other project notices wherever appropriate. Notices required under this part must be
30 bilingual if the affected public is largely non-English speaking. In addition, all notices must be
31 published in a newspaper of general circulation in the affected community or on an appropriate
32 government website, and must be sent to federal, state, and local public agencies,
33 organizations, and, where not otherwise covered, individuals known to be interested in the
34 proposed action.

DRAFT

1 (2) A minimum of 15 calendar days shall be allowed for comment on the public notice. The
2 first day of a time period begins at 12:01 a.m. local time on the day following the publication or
3 the mailing and posting date of the notice which initiates the time period.

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

11 (4) When the proposed activity is located in or affects an environmental justice community
12 under Executive Order 12898, public comment and decisionmaking under this part shall be
13 coordinated with consultation and decisionmaking under HUD policies implementing 24 CFR
14 58.5(j) or 50.4(l).

15 (c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in
16 the FFRMS floodplain or wetland.

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

20 (i) Locations outside and not affecting the FFRMS floodplain or wetland;

21 (ii) Alternative methods to serve the identical project objective, including but not limited to
22 design alternatives such as repositioning or reconfiguring proposed siting of structures and
23 improvements to avoid floodplain and wetland impacts; and

24 (iii) A determination not to approve any action proposing the occupancy or modification of
25 a floodplain or wetland.

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

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

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

31 (ii) Economic values such as the cost of space, construction, services, relocation, potential
32 property losses from flooding, and cost of flood insurance.

DRAFT

1 (3) For multifamily projects involving HUD mortgage insurance that are initiated by third
2 parties, HUD's consideration of practicable alternatives is not required to consider alternative
3 sites, but must include,

4 (i) A determination to approve the request without modification;

5 (ii) A determination to approve the request with modification; and

6 (iii) A determination not to approve the request.

7 (d) *Step 4.* Identify and evaluate the potential direct and indirect impacts associated with
8 the occupancy or modification of the FFRMS floodplain or the wetland and the potential direct
9 and indirect support of floodplain and wetland development that could result from the
10 proposed action, including impacts related to future climate-related flood levels and sea level
11 rise and related increased value of beneficial floodplain and wetland functions.

12 (1) *Floodplain evaluation:* This analysis must evaluate potential adverse impacts to lives and
13 property and natural and beneficial floodplain values with respect to the proposed action and
14 site as compared with alternatives identified in Step 3.

15 (i) Impacts to lives and property include:

16 (A) Potential loss of life, injury or hardship to residents of the subject property during a
17 flood event;

18 (B) Damage to the subject property during a flood event;

19 (C) Damage to surrounding properties from increased runoff or reduction in floodplain
20 function during a flood event due to modification of the subject site;

21 (D) Health impacts due to exposure to toxic substance releases that may be exacerbated
22 by flood events; and

23 (E) Damage to a community as a result of project failure (e.g., failure of stormwater
24 management infrastructure due to scouring).

25 (ii) Impacts to natural and beneficial values include changes to

26 (A) Water resources such as natural moderation of floods, water quality maintenance, and
27 groundwater recharge;

28 (B) Living resources such as flora and fauna (where the project requires consultation under
29 24 CFR 50.4(e) or 58.5(e), consultation with the U.S. Fish & Wildlife Service or National Marine
30 Fisheries Service must include a description of impacts evaluated under this part);

DRAFT

1 (C) Cultural resources such as archaeological, historic, and recreational aspects; and

2 (D) Agricultural, aquacultural, and forestry resources.

3 (2) *Wetland evaluation*: In accordance with Section 5 of Executive Order 11990, the
4 decisionmaker shall consider factors relevant to a proposal's effect on the survival and quality
5 of the wetland. Factors that must be evaluated include, but are not limited to

6 (i) Public health, safety, and welfare, including water supply, quality, recharge, and
7 discharge; pollution; flood and storm hazards and hazard protection; and sediment and
8 erosion, including the impact of increased quantity or velocity of stormwater runoff on, or to
9 areas outside of, the proposed site;

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

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

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

17 (e) *Step 5*. Design or modify the proposed action to minimize the potential adverse
18 impacts to and from the FFRMS floodplain or wetland and to restore and preserve their natural
19 and beneficial functions and values.

20 (1) *Elevation*. All calculations in this section of the base flood elevation and 500-year flood
21 elevation must be made using the best available information as required by § 55.7. For actions
22 in the FFRMS floodplain, the required elevation described in this section must be documented
23 on an Elevation Certificate or a Floodproofing Certificate in the Environmental Review Record
24 prior to construction, or by such other means as HUD may from time to time direct, provided
25 that notwithstanding any language to the contrary, the minimum elevation or floodproofing
26 requirement shall be the elevation of the FFRMS floodplain as defined in this section.

27 (i) If a residential structure undergoing new construction or substantial improvement is
28 located in a floodplain, the lowest floor or FEMA-approved equivalent must be designed using
29 the FFRMS floodplain as the baseline standard for elevation, except where higher elevations are
30 required by state, tribal, or locally adopted code or standards, in which case those higher
31 elevations apply. Where non-elevation standards such as setbacks or other flood risk reduction
32 standards that have been issued to identify, communicate, or reduce the risks and costs of
33 floods are required by state, tribal, or locally adopted code or standards, those standards shall
34 apply in addition to the FFRMS baseline elevation standard.

DRAFT

1 (ii) New construction and substantial improvement of non-residential structures, or
2 residential structures that have no dwelling units and no residents below the FFRMS floodplain
3 and that are not critical actions as defined at § 55.2(b)(3), shall be designed either:

4 (A) With the lowest floor, including basement, elevated to or above the FFRMS floodplain;
5 or

6 (B) With the structure floodproofed at least up to the FFRMS floodplain. Floodproofing
7 standards are as stated in FEMA's regulations at 44 CFR 60.3(c)(3)(ii), or such other regulatory
8 standard as FEMA may issue, and applicable guidance, except that where the standard refers to
9 base flood level, elevation is required above the FFRMS floodplain, as defined in this part.

10 (iii) The term "lowest floor" means the lowest floor of the lowest enclosed area (including
11 basement), except that an unfinished or flood resistant enclosure, usable solely for parking of
12 vehicles, building access or storage in an area other than a basement area, is not considered a
13 building's lowest floor; provided, that such enclosure is not built so as to render the structure in
14 violation of the applicable non-elevation design requirements of 44 CFR 60.3. "Lowest floor"
15 must be applied consistent with FEMA's Elevation Certificate guidance or other applicable
16 current FEMA guidance.

17 (2) *Minimization*. Minimization is a demanding standard and requires HUD or the
18 Responsible Entity to reduce harm to the smallest possible degree. Potential harm to or within
19 the floodplain and/or wetland must be reduced to the smallest possible amount. E.O. 11988's
20 requirement to minimize potential harm applies to (1) the investment at risk, or the flood loss
21 potential of the action itself, (2) the impact the action may have on others, and (3) the impact
22 the action may have on floodplain and wetland values. The record must include a discussion of
23 all minimization techniques that will be incorporated into project designs as well as those that
24 were considered but not approved. Minimization techniques for floodplain and wetlands
25 purposes include, but are not limited to:

26 (i) *Stormwater management and green infrastructure*: the use of permeable surfaces; natural
27 landscape enhancements that maintain or restore natural hydrology through infiltration, native
28 plant species, bioswales, rain gardens, or evapotranspiration; stormwater capture and reuse;
29 green or vegetative roofs with drainage provisions; WaterSense products; rain barrels and grey
30 water diversion systems; and other low impact development and green infrastructure
31 strategies, technologies, and techniques. Where possible, use natural systems, ecosystem
32 processes, and nature-based approaches when developing alternatives for consideration.(ii)
33 *Adjusting project footprint*: evaluate options to relocate or redesign structures, amenities, and
34 infrastructure to minimize the amount of impermeable surfaces and other impacts in the
35 FFRMS floodplain or wetland. This may include changes such as designing structures to be taller
36 and narrower or avoiding tree clearing to reduce potential erosion from flooding.

37 (iii) *Resilient building standards*: consider implementing resilient building codes or standards
38 to ensure a reliable and consistent level of safety.

DRAFT

1 (3) *Restoration and preservation*. Restore means to reestablish a setting or environment in
2 which the natural and beneficial values of floodplains and wetlands could again function.
3 Where floodplain and wetland values have been degraded by past actions, HUD or the
4 Responsible Entity must identify, evaluate, and implement measures to restore the values
5 diminished or lost. Preserve means to prevent modification to the natural floodplain or wetland
6 environment, or to maintain it as closely as possible to its natural state. If an action will result in
7 harm to or within the floodplain or wetland, HUD or the Responsible Entity must ensure that
8 the action is designed or modified to assure that it will be carried out in a manner which
9 preserves as much of the natural and beneficial floodplain and values as is possible.
10 Restoration and preservation techniques for floodplain and wetlands purposes include, but are
11 not limited to:

12 (i) Natural Resource Conservation Service or other conservation easements;

13 (ii) Appropriate and practicable compensatory mitigation is required for unavoidable
14 adverse impacts to more than one acre of wetlands. Compensatory mitigation includes, but is
15 not limited to: permittee-responsible mitigation, mitigation banking, in-lieu fee mitigation, the
16 use of preservation easements or protective covenants, and any form of mitigation promoted
17 by state or federal agencies. The use of compensatory mitigation may not substitute for the
18 requirement to avoid and minimize impacts to the maximum extent practicable.

19 (4) All critical actions in the FFRMS floodplain must be modified to include:

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

21 (ii) Plan for emergency evacuation and relocation to a facility of like capacity that is
22 equipped to provide required critical needs-related care and services at a level similar to the
23 originating facility;

24 (iii) Identification of evacuation route(s) out of the FFRMS and 500-year floodplain;

25 and

26 (iv) Permanent identification marks of past or estimated flood levels on all structures.

27 (f) *Step 6*. HUD or the Responsible Entity shall consider the totality of the previous steps
28 and the criteria in this subsection to make a decision as to whether to approve, approve with
29 modifications, or reject the proposed action. Adverse impacts to floodplains and wetlands
30 must be avoided if there is a practicable alternative. This analysis must consider:

31 (1) Whether the action is still practicable in light of exposure to flood hazards in the
32 floodplain or wetland, possible adverse impacts on the floodplain or wetland, the extent to
33 which it will aggravate the current hazards to other floodplains or wetlands, and the potential
34 to disrupt the natural and beneficial functions and values of floodplains or wetlands; and

DRAFT

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

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

8 (ii) A reevaluation of alternatives under this step should include a discussion of economic
9 costs. For floodplains, the cost estimates should include savings or the costs of flood insurance,
10 where applicable; flood proofing; replacement of services or functions of critical actions that
11 might be lost; and elevation to at least the base flood elevation for sites located in floodplains,
12 as appropriate on the applicable source under §55.7. For wetlands, the cost estimates should
13 include the cost of filling the wetlands and mitigation.

14 (iii) If the proposed activity is located in or affects an environmental justice community
15 under EO 12898, the reevaluation must address public input provided during environmental
16 justice outreach (if conducted) and must document the ways in which the activity, in light of
17 information analyzed, mitigation measures applied, and alternatives selected, serves to reduce
18 any historical environmental disparities in the community.

19 (g) Step 7. (1) If the reevaluation results in a determination that there is no practicable
20 alternative to locating the proposal in the FFRMS floodplain or the wetland, publish a final
21 notice that includes:

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

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

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

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

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

34 [59 FR 19107, Apr. 21, 1994, as amended at 78 FR 68732, Nov. 15, 2013]

DRAFT

1 [↑ Back to Top](#)

2 [↑ Back to Top](#)

3 **§55.21 Alternate processing for existing nonconforming sites.**

4 Notwithstanding the limitations on HUD assistance defined in § 55.8, in exceptional
5 circumstances the Assistant Secretary for Community Planning and Development may approve
6 HUD assistance to improve an existing HUD-assisted property if the following conditions are
7 satisfied:

- 8 (a) It is not practicable to transfer the HUD assistance to a more acceptable site under
9 existing program rules, financial limitations, and site availability;
- 10 (b) HUD or the Responsible Entity completes an Environmental Assessment or
11 Environmental Impact Statement, including the 8-step decisionmaking process pursuant
12 to § 55.20, and mandates measures to ensure that the elevated flood risk is the only
13 environmental hazard or impact; and
- 14 (c) The proposed project includes, to the extent practicable, measures to meaningfully
15 reduce flood risk and increase the overall resilience of the site, including elevation or
16 floodproofing of all structures in the FFRMS floodplain and measures to minimize flood
17 risk and preserve the function of the floodplain and any impacted wetlands as described
18 in 55.20(e).

19 **§55.22 Conveyance restrictions for the disposition of multifamily real property.**

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

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

26 (b)(1) For disposition of multifamily properties acquired by HUD that are located in a 500-
27 year floodplain and contain Critical Actions, HUD shall, as a condition of approval of the
28 disposition, require by covenant or comparable restriction on the property's use that the
29 property owner and successive owners provide written notification to each current and
30 prospective tenant concerning: (i) The hazards to life and to property for those persons who
31 reside or work in a structure located within the 500-year floodplain, and

32 (ii) The availability of flood insurance on the contents of their dwelling unit or business.

33 (2) The notice shall also be posted in the building so that it will be legible at all times and
34 easily visible to all persons entering or using the building.

DRAFT

1 [59 FR 19107, Apr. 21, 1994, as amended at 59 FR 33199, June 28, 1994]

2 [↑ Back to Top](#)

3 **§55.23 [Reserved]**

4 [↑ Back to Top](#)

5 [78 FR 68734, Nov. 15, 2013]

6 [↑ Back to Top](#)

7 [↑ Back to Top](#)

8 **§55.26 Adoption of another agency's review under the executive orders.**

9 If a proposed action covered under this part is already covered in a prior review
10 performed under Executive Order 11988 and/or Executive Order 11990 by another agency,
11 including HUD or a different responsible entity, that review may be adopted by HUD or by a
12 responsible entity authorized under 24 CFR part 58 without further public notice, provided that:

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

15 (b) The adopting agency makes a finding that:

16 (1) The action currently proposed has not substantially changed in project description,
17 scope and magnitude from the action previously reviewed by the other agency; and

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

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

22 [59 FR 19107, Apr. 21, 1994, as amended at 78 FR 68734, Nov. 15, 2013]

23 [↑ Back to Top](#)

24