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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 50, 55, 58, and 200

[Docket No. FR-5717-P-01]
RIN 2501-AD62

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

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD's regulations governing floodplain management to require, as part of the decision making process established to ensure compliance with Executive orders on Floodplain Management and Federal Flood Risk Management, that a HUD assisted or financed (including mortgage insurance) project involving new construction or substantial improvement that is situated in an area subject to floods be elevated or floodproofed between 2 and 3 feet above the base flood elevation as determined by best available information.

The proposed rule would also revise HUD's Minimum Property Standards for one-to-four unit housing under HUD mortgage insurance and low-rent public housing programs. Building to the proposed standards will, consistent with the Executive orders, increase resiliency to flooding, reduce the risk of flood loss, minimize the impact of floods on human safety, health, and welfare, and promote sound, sustainable, long-term planning informed by a more accurate evaluation of flood risk that takes into account possible sea level rise and increased development associated with population growth.

This document also proposes to revise a categorical exclusion available when HUD performs the environmental review under the National Environmental Policy Act (NEPA) and related Federal laws by making it consistent with changes to a similar categorical exclusion that

is available to HUD grantees or other responsible entities when they perform these environmental reviews. This change will make the review standard identical regardless of whether HUD or a grantee is performing the review.

DATES: Comment Due Date: [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Danielle Schopp, Director, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7250, Washington, DC 20410-8000, telephone number 202-402-4442. For inquiry by phone or email, contact Elizabeth Zepeda, Environmental Review Division, Office of Environment and Energy, Office of Community Planning and Development, at 202-402-3988 (this is not a toll-free number), or email to: Elizabeth.G.Zepeda@hud.gov. For questions regarding the Minimum Property Standards, Robert L Frazier, Housing Program Policy Specialist, Office of Housing, Home Valuation Division, 202-708-2121. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

In the United States, floods caused 4,586 deaths from 1959 to 2005.[1] With climate change and associated sea-level rise, flooding risks have increased over time, and are anticipated to continue increasing. The National Climate Assessment (May 2014), for example, projects that extreme weather events, such as severe flooding, will persist throughout the 21st century. Severe flooding can cause significant damage to infrastructure, including buildings, roads, ports, industrial facilities, and even coastal military installations. With more than $260 billion in flood damages across the Nation since 1980, it is necessary to take action to responsibly use Federal funds, and HUD must ensure it does not wastefully make Federal investments in the same structures after repeated flooding events. In addition, the FFRMS will align with the thousands of communities across the country that have strengthened their local floodplain management codes and standards to ensure that buildings and infrastructure are resilient to flood risk. HUD recognizes that the need to make structures resilient also requires a flexible approach to adapt to the needs of the Federal agency, local community, and the circumstances surrounding each project or action.

In response to the threats that increasing flood risks pose to life and taxpayer funded property, on January 30, 2015, the President signed Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input. Significantly, Executive Order 13690 amended Executive Order 11988, Floodplain Management, issued in 1977[2] by, among other things, revising Section 6(c) of

[1] "Flood Fatalities in the United States," Sharon T. Ashley and Walker S. Ashley, *Journal of Applied Meteorology and Climatology*. Available at: http://journals.ametsoc.org/doi/pdf/10.1175/2007JAMC1611.1

[2] E.O. 13690 was published in the Federal Register on February 4, 2015 (80 FR 6425). Throughout this document, references to E.O. 11988 as amended by E.O. 13690 will be referred to as "Executive Order 11988, as amended." References to E.O. 11988 as published in 1977 will simply be referred to as "Executive Order 11988."

Executive Order 11988 to provide new approaches to establish the floodplain. Executive Order 13690 provided, however, that prior to any actions implementing Executive Order 13690, additional input from stakeholders be solicited and considered. Consistent with this direction, the Federal Emergency Management Agency (FEMA), as Chair of the Mitigation Framework Leadership Group (MitFLG[3]), published a notice in the Federal Register seeking comment on the proposed "Revised Guidelines for Implementing Executive Order 11988, Floodplain Management" to provide guidance to agencies on the implementation of Executive Orders 13690 and 11988 (80 FR 6530, February 5, 2015). On March 26, 2015 (80 FR 16018), FEMA on behalf of MitFLG published a document in the Federal Register extending the public comment period for 30 days until May 6, 2015. MitFLG held 9 public listening sessions across the country that were attended by over 700 participants from State and local governments and other stakeholder organizations to discuss the Guidelines.[4] MitFLG considered stakeholder input and provided recommendations to the Water Resources Council[5].

On October 8, 2015, the Water Resources Council issued updated "Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and

[3] The Mitigation Framework Leadership Group (MitFLG) is a senior level group formed in 2013 to coordinate mitigation efforts across the Federal Government and to assess the effectiveness of mitigation capabilities as they are developed and deployed across the Nation. The MitFLG includes relevant local, state, tribal, and Federal organizations. The balance of non-Federal members ensures appropriate integration of Federal efforts across the whole community." The MitFLG Charter is available at: http://www.aswm.org/pdf_lib/nffa/mitigation_framework_leadership_group_charter.pdf

[4] A list of stakeholder listening sessions can be found at: www.fema.gov/federal-flood-risk-management-standard-ffrms.

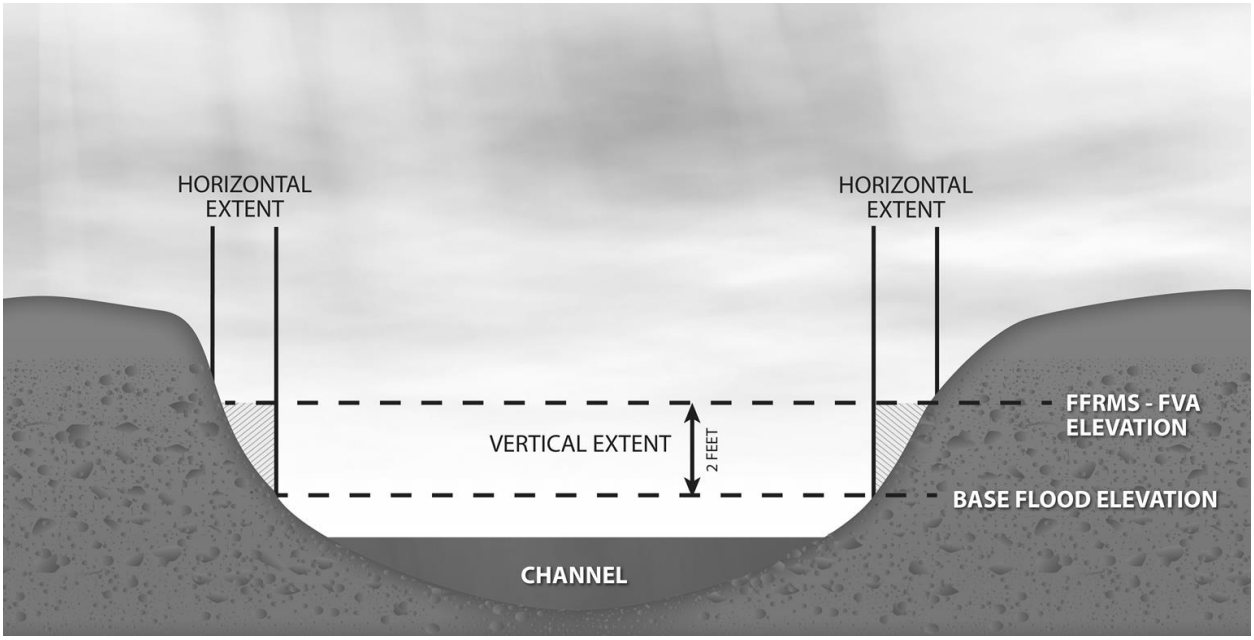
[5] The Water Resources Council (WRC) is tasked to maintain a continuing study and prepare an assessment of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and the national interest therein. The WRC is a means for the coordination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

Considering Stakeholder Input" (Guidelines). The Guidelines state that although the Guidelines describe various approaches for determining the higher vertical flood elevation and corresponding horizontal floodplain for federally funded projects, they are not meant to be an elevation standard, but are a resilience standard. Accordingly, roads, parking lots, and other horizontal infrastructure do not require elevation nor do acquisitions of structures that do not require substantial improvements. However, the new Guidelines require that all future actions where federal funds are used for new construction, substantial improvement or to address substantial damage meet the level of resilience established by the Guidelines. In implementing the Guidelines and establishing the Federal Flood Risk Management Standard (FFRMS), Federal agencies were to select among the following three approaches for establishing the flood elevation and hazard area in siting, design, and construction:

- Climate-Informed Science Approach (CISA): Utilizing best-available, actionable data and methods that integrate current and future changes in flooding based on science,
- Freeboard[6] Value Approach (FVA): Two or three feet of elevation, depending on the criticality of the building, above the 100-year, or 1 percent-annual-chance, flood elevation, or
- 500 Year Flood (0.2 Percent Flood) Approach: 500-year, or 0.2 percent-annual-chance, flood elevation.

[6] Freeboard is defined by FEMA as "a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed." See 44 CFR 59.1. Freeboard is not required by NFIP standards, but communities are encouraged to adopt at least a one-foot freeboard to account for the one-foot rise built into the concept of designating a floodway and the encroachment requirements where floodways have not been designated. Freeboard may result in lower flood insurance rates due to lower flood risk. Available at: http://www.fema.gov/freeboard

The FVA and 0.2 Percent Flood approaches result in higher elevations with correspondingly larger horizontal floodplain areas. CISA will generally have a similar result, except that agencies using CISA may find the resulting elevation to be equal to or lower than the current elevation in some areas due to the nature of the specific climate change processes and physical factors affecting flood risk at the project site. However, as a matter of policy established in the Executive Order 11988 and 13690 Implementing Guidelines, CISA can only be used if the resulting flood elevation is equal to or higher than current base flood elevation. The higher elevations result in a larger horizontal floodplain as illustrated below:



Executive Order 11988, issued May 24, 1977 (published in the Federal Register on May 25, 1977 at 42 FR 26951), requires Federal agencies to avoid, to the extent possible, the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. Floodplains are found both in coastal flood areas, where rising tides and storm surge are often responsible for flooding, and in riverine flood areas where moving water bodies may

overrun their banks due to heavy rains or snow melt. Because flood risk can change over time, FEMA continually revises floodplain maps to incorporate new information and reflect current understanding of flood risk.

Prior to Executive Order 13690, a floodplain for Executive Order 11988 purposes referred to the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year (often referred to as the "100-year" flood or "base flood"). Executive Order 13690 amended Executive Order 11988, to require agencies to update the FFRMS and the original Executive Order 11988 floodplain using one (or a combination) of the three approaches listed above, which are incorporated in the FFRMS.

Consistent with Executive Order 11988, when no practicable alternative exists to development in flood-prone areas, HUD requires the design or modification of the proposed action to minimize potential adverse impact to and from flooding. HUD has implemented Executive Order 11988 and its 8-step review process through regulations at 24 CFR part 55. HUD requires the 8-step review process for activities occurring in the floodplain such as new construction of infrastructure or substantial improvement of buildings and hospitals. HUD requires that all HUD assisted or financed construction and improvements (including mortgage insurance actions) undergo the 8-step review process unless they are subject to an exception or categorical exclusion under 24 CFR 50.19, 24 CFR 55.12, 24 CFR 58.34, or 24 CFR 58.35(b). For example, the 8-step review process in § 55.20 does not apply to non-critical[7] mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one-to-four family properties in communities that are in the Regular Program of the

[7] Non-critical actions are any actions that are not critical actions as defined at 24 CFR 55.2(b)(3)(i).

National Flood Insurance Program (NFIP) and in good standing, where the property is not located in a floodway or coastal high hazard area, or to financial assistance for minor repairs or improvements on one-to-four family properties. While the 8-step review process may not apply to these activities, HUD's current Minimum Property Standards at 24 CFR 200.926d require that single-family housing newly constructed under HUD mortgage insurance and specific low-rent public housing programs have its lowest floor at or above the base flood elevation.

II. This Proposed Rule

A. Short summary.

The proposed revision to HUD's floodplain regulations uses the framework of Executive Order 11988 which HUD has implemented for almost 40 years and does not change which actions require elevation and floodproofing of structures. This proposed rule would require that non-critical actions be elevated 2 feet above the base flood elevation. In addition, the rule would require that critical actions be elevated above the greater of the 500-year floodplain or 3 feet above the base flood elevation. For structures subject to HUD's floodplain regulation, this proposed rule also would enlarge the horizontal area of interest commensurate with the vertical increase, but the rule does not change the scope of actions to which the floodplain review process or elevation requirements in the floodplains regulations apply. The proposed rule would also revise HUD's Minimum Property Standards for one-to-four-unit housing under HUD mortgage insurance and low-rent public housing programs to require that the lowest floor in both newly constructed and substantially improved structures located within the 100-year floodplain be built at least 2 feet above the base flood elevation as determined by best available information, but does not enlarge the horizontal area of interest.

B. Detailed discussion.

As communities continue to recover from the devastating effects of Hurricane Sandy and other flood disasters, HUD has determined that their lessons cannot be ignored and point to the need for mitigation and resilience standards that ensure that structures located in flood-prone areas are built or rebuilt stronger, safer, and less vulnerable to future flooding events. As a result, consistent with the FVA described above for HUD assisted or financed actions, this proposed rule would require that structures involving new construction and substantial improvements and subject to 24 CFR part 55 be built to FFRMS and elevated at least 2 feet above the base flood elevation using best available information[8]. For structures that meet the definition of critical actions as described in § 55.2(b)(3)(i), this proposed rule would require that structures in the FFRMS floodplain be elevated to the greater of the 500-year floodplain or 3 feet above the base flood elevation. For new or substantially improved non-residential structures in the FFRMS floodplain that are not critical actions, HUD is proposing that the structure either be elevated to the same level as residential structures, or, alternatively, be designed and constructed such that the structure is floodproofed to at least 2 feet above the base flood elevation.

This proposed rule would also apply a similar new elevation standard to one-to-four family residential structures, located in the 1 percent-annual-chance floodplain, that involve new construction or substantial improvement with mortgages insured by the Federal Housing Administration. This proposed rule would require elevation of these structures at least 2 feet above base flood elevation using the best available information. In order to meet the goal of improving the resilience of such properties while also aligning to the manner in which such

[8] Best available information, may be the latest FEMA issued data or guidance, including advisory data (such as Advisory Base Flood Elevations (ABFE)), preliminary Flood Insurance Rate Maps (FIRMs), final FIRMs, or other Federal, State or local information.

programs already operate, the proposed rule excludes the horizontal extent of the FVA described above for such properties, as explained further in later in this preamble.

Elevation standards for manufactured housing receiving mortgage insurance are not covered in this rule change, but HUD expects to address this issue in future rulemaking. However, 24 CFR part 55, subject to exceptions and exclusions, will continue to apply to manufactured housing that receives assistance that is not in the form of mortgage insurance. This rule does not change the scope of activities that require compliance with the 8-step process, but rather it changes the vertical and horizontal extent of the floodplain for the purposes of 24 CFR part 55.

There are two primary purposes for this rulemaking. First, HUD's experience in the wake of Hurricane Sandy and other flood disasters is that unless structures in flood-prone areas are properly designed, constructed, and elevated, they may not withstand future severe flooding events. As recognized by MitFLG and required by the FFRMS and Executive Order 13690, requiring structures to be elevated an additional elevation above the base flood elevation will increase resiliency and reduce property damage, economic loss, and loss of life, and can also benefit homeowners by reducing flood insurance rates. These higher elevations provide an extra buffer of 2 to 3 feet above the base flood elevation based on the best available information to improve the long term resilience of communities. Second, the higher elevation standards help account for increased flood risk associated with projected sea level rise, which is not considered in current FEMA maps and flood insurance costs. As stated in "Global Sea Level Rise Scenarios for the United States National Climate Assessment" U.S. Department of Commerce, National

Oceanic and Atmospheric Administration, December 2012[9], federal experts have a very high confidence (greater than a 9 in 10 chance) that global mean sea level will rise at least 0.2 meters (8 inches) and no more than 2.0 meters (6.6 feet) by the year 2100. The higher elevation standard will address the lower end of this projection, while also allowing for greater impacts to be addressed as well.

This proposed rule uses the framework of Executive Order 11988 which HUD has implemented for nearly forty years. The proposed rule in 24 CFR part 55 does not change the requirements and guidance specifying when elevation and floodproofing of structures is required. For instance, HUD currently requires that a single family property involving new construction or substantial improvement financed with a HUD grant and located in the 1 percent-annual-chance floodplain in the effective Flood Insurance Rate Map (FIRM) be elevated to the effective FIRM base flood elevation. This proposed rule would add two feet of additional elevation to the base flood elevation as a resilience standard. Similarly, the proposed rule would not change the requirements or guidance governing rowhomes or structures with basements except to add two feet of additional elevation. As in the past, projects involving substantial improvement to rowhomes would have several options: (1) elevate the effected home or homes, either by raising the floor within the home or elevating the full block; (2) if the homes are possibly historic, take formal steps to have the home(s) listed on the National Register of Historical Places or on a State Inventory of Historic Places, as structures with historic status are not required to elevate; or (3) alter the design plans so that substantial improvement is not being performed, such that elevation is not required. Likewise, some structures with basements would continue to be affected under the proposed rule. In some cases, raising the floor or filling in basements altogether may be

[9] Available at http://cpo.noaa.gov/Home/AllNews/TabId/315/ArtMID/668/ArticleID/80/Global-Sea-Level-Rise-Scenarios-for-the-United-States-National-Climate-Assessment.aspx.

necessary. In non-residential structures, floodproofing could be an option to preserve basements. HUD does not anticipate significant impacts on basements from the proposed rule; since HUD began collecting data on single-family properties basements in 2014, no single-family property has been affected by HUD's current flood elevation requirements.

HUD chose the FVA over the CISA and the 0.2 Percent Flood approaches for a variety of reasons. First, the FVA can be applied consistently to any area participating in the NFIP. The FVA can be calculated using existing flood maps. This is not true for the CISA standard unless HUD were to establish criteria for every community regarding the application of particular climate and greenhouse gas scenarios and associated impacts (e.g., changes in precipitation patterns or relative sea-level rise rates). Rather than requiring this level of review and analysis, HUD chose the more direct FVA. Second, the two alternative approaches to FVA require expertise that may not be available to all communities. The 0.2 Percent Flood is not mapped in all communities, reflects in most coastal areas the stillwater (without storm surge) component of flooding and this is only appropriate for determining the horizontal floodplain extent. Local wave effects associated with the 0.2 percent stillwater flood elevation would need to be determined for the data to be used in establishing first floor or floodproofing elevation or any other engineering application. The 0.2 Percent Flood also requires a significant degree of expertise to map over an area or for an individual site. The same is also true for the CISA standard, which requires not just historical analysis but a greater anticipation of trends and future conditions. Third, HUD anticipates that it will not be cost effective to establish the CISA or the 0.2 Percent Flood for all projects. HUD funds or assists tens of thousands of small projects each year. For example, repaving a road or rehabilitating a single family home may not necessitate the extra amounts of cost required by the CISA and 0.2 Percent Flood approaches. Fourth, as

stated earlier, many states and communities already have success applying a higher-elevation approach to floodplains. Due to the familiarity that many communities have with higher elevation standards, the FVA was seen as a very practical approach with documented history of application. For all of these reasons, HUD chose the FVA approach.

Requiring a higher elevation standard will also address increased risk that occurs when flood maps do not reflect the current development footprint. Additional development and impervious surface decrease floodplain capacity and increase flood risk to structures. As more of the floodplain is paved, the floodplain absorbs less water and the area subject to flooding is increased. For this reason and generalized uncertainty in flood modeling processes, two prominent building codes, the International Building Code and International Residential Code[10] both recommend the use of elevation of structures – also called "freeboard" – to mitigate flood hazards. Freeboard is defined by FEMA to mean a factor of safety usually expressed in feet above base flood elevation for purposes of floodplain management. Freeboard is currently required by 20 States (plus the District of Columbia and Puerto Rico) and 596 localities[11].

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[10] The IBC states: G103.1 Permit applications.
The building official shall review all permit applications to determine whether proposed development sites will be reasonably safe from flooding. If a proposed development site is in a flood hazard area, all site development activities (including grading, filling, utility installation and drainage modification), all new construction and substantial improvements (including the placement of prefabricated buildings and manufactured homes) and certain building work exempt from permit under Section 105.2 shall be designed and constructed with methods, practices and materials that minimize flood damage and that are in accordance with this code and ASCE 24.

ASCE 24 then states a few freeboard requirements. See: http://www.fema.gov/media-library-data/1436288616344-93e90f72a5e4ba75bac2c5bb0c92d251/ASCE24-14_Highlights_Jan2015_revise2.pdf . The IRC provides that: Buildings and structures in flood hazard areas designated as Coastal A Zones shall have the lowest floors elevated to or above the base flood elevation plus 1 foot (305 mm), or to the design flood elevation, whichever is higher. R322.2.1 Elevation requirements. http://publicecodes.cyberregs.com/icod/irc/2012/icod_irc_2012_3_sec022.htm

[11] Association of State Floodplain Managers, States and Other Communities in FEMA CRS with Building Freeboard Requirements, (2015), available at http://www.floods.org/ace-files/documentlibrary/FloodRiskMngmtStandard/States_with_freeboard_and_CRS_Communities_with_Freeboard_in_Other_states_2-27-15.pdf.

A recent FEMA study also estimated that the size of floodplains and demand for flood insurance coverage will continue to increase.[12] The study estimated that the total number of NFIP insurance policies was projected to increase by approximately 80 percent by 2100. The number of riverine policies may increase by about 100 percent and the number of coastal policies may increase by approximately 60 percent. The increase in the number of polices is due in part to development associated with normal population growth and in part to the effect of climate change on the amount of land in the floodplain within communities.

Requiring additional elevation above the base flood elevation also produces net savings in housing costs over time. HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. Flood insurance and rebuilding costs can have drastic adverse effects on the affordability of homes. By elevating additional feet above the base flood elevation, homeowners may benefit from flood insurance premium reductions that will increase long-term affordability. As stated in FEMA's "Home Builder's Guide To Coastal Construction, Designing for Flood Levels Above the BFE" Technical Bulletin No. 1.6[13], constructing or reconstructing structures 2 feet above base flood elevation at a modest cost can result in premium savings of 50 percent in V Zone structures and 48 percent in A Zones. Please see the discussion of other cost reductions and benefits of increasing elevation in the regulatory impact analysis that accompanies this rule.

1. Federal Flood Risk Management Standard Floodplain

HUD proposes to implement FFRMS by revising § 55.20, which is HUD's current 8-step process for evaluating HUD-assisted projects for flood risk and identifying steps to mitigate that

[12] Available at: http://www.aecom.com/content/wp-content/uploads/2016/06/Climate_Change_Report_AECOM_2013-06-11.pdf
[13] Available at: http://www.fema.gov/media-library-data/20130726-1537-20490-8057/fema499_1_6_rev.pdf

risk. The 8-step process is currently triggered whenever a proposed non-critical action falls within the 100-year floodplain, as defined in § 55.2(b)(9), and whenever a critical action falls within the 500-year floodplain, as defined in § 55.2(b)(4). This proposed rule would expand the scope of § 55.20 by applying it to all projects situated at an elevation at or below the FFRMS floodplain.

HUD proposes to define FFRMS floodplain in § 55.2(b)(12) for non-critical actions as land that is less than two feet above the 100-year floodplain. For critical actions, the FFRMS floodplain would be defined to include land that is either within the 500-year floodplain or less than three feet above the 100-year floodplain. Section 55.20(e) of the proposed rule would provide that, in addition to the current mitigation and risk reduction requirements, all actions in the FFRMS floodplain must be elevated or, in certain cases, floodproofed above the FFRMS floodplain. If higher elevations, setbacks, or other floodplain management measures are required by state, tribal, or locally adopted code or standards, HUD would provide that those higher standards would apply.

For non-critical actions that are non-residential structures or multifamily residential structures that have no residential dwelling units below the FFRMS floodplain, HUD is proposing that projects may, as an alternative to being designed and built above the FFRMS floodplain, be designed and constructed such that, below the FFRMS floodplain, the structure is floodproofed. HUD would, except for changing "base flood level" to "FFRMS floodplain," as defined in § 55.2(b)(12), adopt FEMA's requirements for floodproofing as provided in FEMA's regulations at 44 CFR 60.3(c)(3)(ii), which describes "floodproofing" as requiring that structures, "together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight 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." If higher standards are required by the NFIP or state, tribal, or locally adopted codes or standards, or if FEMA revises its NFIP regulation, those higher standards or later regulation would apply; except that notwithstanding any later, less stringent general standard, HUD will continue to require floodproofing to at least the FFRMS floodplain for those projects. In summary, all new construction or substantial rehabilitation of non-residential and certain mixed-use structures within the FFRMS floodplain that are not elevated must be floodproofed consistent with the latest FEMA standards above the level of the FFRMS floodplain. This provision would permit owners of non-residential and certain mixed-use buildings to construct structures in a way that is less expensive than elevation but allows the buildings to withstand flooding, thus appropriately balancing property protection with costs and reflecting the lower risk to human life and safety in non-residential structures or parts of structures.

In the case of multifamily buildings, HUD would provide that the term "lowest floor" must be applied consistent with FEMA's Elevation Certificate guidance or FEMA's current guidance that establishes lowest floor. Specifically, HUD would define "lowest floor" to mean the lowest floor of the lowest enclosed area (including basement), except that an unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided, that such enclosure is not built so as to render the structure in violation of the non-elevation design requirements of 44 CFR 60.3.

The definition of "substantial improvement," codified at § 55.2(b)(10), would not change but continue to include any repair, reconstruction, modernization or improvement of a structure,

the cost of which equals or exceeds 50 percent of the market value of the structure either: (1) before the improvement or repair is started; or (2) if the structure has been damaged and is being restored, before the damage occurred. The definition of substantial improvement also includes repairs, reconstruction, modernization, or improvements that increase the average peak number of customers or employees likely to be on-site at any one time or the number of dwelling units in residential projects more than 20 percent. "Substantial improvement" does not include alterations to structures listed on the National Register of Historic Places or on a State Inventory of Historic Places or improvement of a structure to comply with existing state or local code specifications that is solely necessary to assure safe living conditions.

The provisions relating to Letters of Map Amendment (LOMAs) and Letters of Map Revision (LOMRs) at § 55.12(c)(8) as well as the provision at § 55.26 covering the adoption of other agency floodplain and wetland reviews would also be updated to reflect the FFRMS.

2. Data Sources

Under this proposed rule, the required data source and best available information under Executive Order 11988 remains the latest FEMA issued data or guidance, which includes advisory data (such as Advisory Base Flood Elevations (ABFE)) or preliminary and final Flood Insurance Rate Maps (FIRM). Executive Order 11988 on floodplain management requires that federal agencies use the best available information to determine the flood risk for locations of projects and activities. Section 55.2(b)(1) provides that when FEMA provides interim flood hazard data, such as ABFE or preliminary maps and studies, HUD or the responsible entity shall use the latest of these sources to establish the floodplain. If FEMA information is unavailable or insufficiently detailed, other federal, state, tribal, or local data may be used as "best available information" in accordance with Executive Order 11988. However, a base flood elevation from

an interim or preliminary or non-FEMA source cannot be used if it is lower than the current FIRM and Flood Insurance Study. This proposed rule clarifies, however, that in addition to FIRMs or ABFEs, the use of sources, such as U.S. Global Change Research Program, National Oceanic and Atmospheric Administration, United States Army Corps of Engineers, U.S. Geological Survey, and other FEMA sources, regarding climate impacts and sea level rise may be considered and must be considered for Environmental Impact Statements (EIS). These agencies often offer analyses that are forward-looking and may be more robust than the data offered under NFIP, which does not currently analyze sea level rise in FIRMs. These sources cover subject areas such as estimated sea level rise or catastrophic failure of flood control projects that may lead the reviewer to determine that an elevation greater than the FFRMS floodplain is appropriate. These sources may supplement the FIRM or ABFE but cannot be used as a basis for a lower elevation than otherwise required under this part.

3. Other Changes

In addition to increasing the elevation requirement, the rule proposes several other changes to enhance efficiency and consistency. First, the rule would amend the public notice requirements in §§ 55.20(b)(1) and 58.43(a) to allow parties to provide the public with notice of potential actions using government websites in lieu of a "local printed news medium" or "newspaper of general circulation in the affected community" as required under the current regulations. Second, the proposed rule also adds the word "method" to § 55.20(c)(1) to make the sentence consistent with language that immediately follows in § 55.20(c)(1)(ii) stating that alternative flood protection method considerations are, in addition to alternative site considerations, required under this subpart. Third, the proposed rule updates the definition of Coastal High Hazard Area (V Zone) to match FEMA's more thorough definition at 44 CFR 59.1,

which is used by the NFIP. The change will have no impact on the function of 24 CFR part 55, because FEMA FIRMs will remain the principal source of V Zone data. Finally, the proposed rule makes a technical correction to a citation located in table 1 in § 55.11(c).

4. Minimum Property Standards

This rulemaking also proposes to apply a new elevation standard to one-to-four-family residential structures with mortgages insured by the FHA. Generally, in HUD's single-family mortgage insurance programs, Direct Endorsement mortgagees submit applications for mortgage insurance to HUD, and Lender Insurance mortgagees endorse loans for insurance, after the structure has been built. Thus, there is no HUD review or approval before the completion of construction. In these instances, HUD is not undertaking, financing or assisting construction or improvements. Thus, the FHA single family mortgage insurance program is not subject to Executive Order 11988, NEPA (42 U.S.C. 4321 et seq.), or related environmental laws or authorities. However, newly constructed single-family properties in HUD's mortgage insurance programs are generally required to meet HUD's minimum property standards under 24 CFR 200.926 through 200.926e. These property standards require that when HUD insures a mortgage on a property, the property meets basic livability and safety standards and is code compliant. The section relating to construction in flood hazard areas, § 200.926d(c)(4), has long been included as a property standard.

In alignment with the proposals in this rulemaking that address FFRMS under Executive Order 11988, HUD is also proposing to amend its Minimum Property Standards on site design, and specifically the standards addressing drainage and flood hazard exposure at § 200.926d(c)(4). The purpose of the amendment of the property standard is to decrease potential damage from floods, increase the safety and soundness of the property for residents, and provide

for more resilient communities in flood hazard areas. HUD would revise the section by requiring the lowest floor of newly constructed and substantially improved structures, within the 100-year floodplain, with and without basements to be at least 2 feet above the base flood elevation as determined by best available information. For one- to four-unit housing under HUD mortgage insurance and low-rent public housing programs, HUD's Minimum Property Standards in 24 CFR part 200 currently require that a one- to four-unit property involving new construction, located in the 1 percent-annual-chance floodplain in the effective Flood Insurance Rate Map (FIRM), be elevated to the effective FIRM base flood elevation. This proposed rule would add two feet of additional elevation to the base flood elevation as a resilience standard and would apply this standard to substantial improvement as well as new construction of such properties. This rule would not require consideration of the horizontally expanded FFRMS floodplain for single-family mortgage insurance projects governed by the requirements in the Minimum Property Standards.

5. Categorical Exclusion

HUD also proposes to amend § 50.20(a)(2)(i) to revise the categorical exclusion from environmental review under NEPA for minor rehabilitation of one- to four-unit residential properties. Specifically, HUD would remove the qualification that the footprint of the structure may not be increased in a floodplain or wetland when HUD performs the review. HUD recently removed the footprint trigger from the categorical exclusion at § 58.35(a)(3)(i) to allow rehabilitations reviewed by HUD responsible entities this ability to utilize this exclusion. This change will make the review standard the same regardless of whether HUD or a responsible entity is performing the review. Currently, when HUD performs a review under 24 CFR part 50, four units can be constructed in a floodplain or wetland as an individual action without an

environmental assessment under the categorical exclusion in § 50.20(a)(3), but rehabilitated structures in a floodplain or wetland with an increased footprint would require a full environmental assessment. It is logically inconsistent to require a greater review for minor rehabilitations than new construction and to apply a higher level of review for HUD as opposed to grantees.

6. Specific Questions for Comment

In addition to seeking comments on implementing FFRMS, HUD specifically seeks public comments on the impact of the proposed elevation requirement on the accessibility of covered multifamily dwellings under the Fair Housing Act, the Americans with Disabilities Act (ADA), the Architectural Barriers Act (ABA), and section 504 of the Rehabilitation Act of 1973. Elevating buildings as a flood damage mitigation strategy may have a negative impact on affected communities' disabled and elderly populations, unless those buildings are made accessible. As a result, HUD invites comments on strategies it could employ to increase the accessibility of properties so affected in the event the proposed increase in elevation is adopted. Additionally, HUD invites comment on the cost and benefits of such strategies, including data that supports the costs and benefits.

HUD is not including as part of this proposed rule, guidance to determine the horizontal extent of the FFRMS floodplain. In this regard, HUD believes that it is imperative to preserve the option to use new methodologies to determine horizontal extent as they become available. Nevertheless, HUD is seeking public comments on potential limits to the area and horizontal extent of the floodplain beyond the 100-year floodplain when using the FFRMS. Specifically, HUD is considering whether to use HUD's current areawide compliance process described at 24 CFR 55.25 to allow HUD to enter into allow voluntary agreements with communities to limit

horizontal extent beyond the 100-year floodplain where: (1) Best-available and actionable climate data shows the area and horizontal extent of the two foot freeboard (or three foot for a Critical Action) FFRMS exceeds local, relative sea-level rise rates or other climate-related projections and the 500-year floodplain including wave heights; and

(2) There are limited or no safely or sustainably developable sites in a community outside of the two foot FVA (or three foot for a Critical Action).

HUD also invites comment on other approaches to limit the horizontal extent of the floodplain beyond the 100-year floodplain. Information regarding the cost and benefits of adopting any proposed limit is also requested.

Further information about best-available and actionable climate data and the Climate-Informed Science Approach of the FFRMS is available in Appendix H of the October 8, 2015 Guidelines for 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 (Guidelines).

Finally, HUD invites comments on alternative approaches to define the FFRMS floodplain for critical actions. For structures that meet the definition of critical actions as described in § 55.2(b)(3)(i) (e.g., fire stations, police stations, and hospitals), this proposed rule would require that structures be elevated to the greater of the 500-year floodplain or 3 feet above the base flood elevation. HUD requests alternative suggestions for defining the floodplain for the purposes of these projects for which even a slight chance of flooding is too great.

III. Findings and Certifications

Regulatory Review – Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination

must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

As discussed in this preamble, the proposed regulatory amendments would, based on Executive Order 13690 and the Guidelines, require, as part of the decisionmaking process established to ensure compliance with Executive Order 11988 (Floodplain Management), that new construction or substantial improvement in a floodplain be elevated or floodproofed 2 feet above the base flood elevation for non-critical actions and above the greater of the 500-year floodplain or 3 feet above the base flood elevation for critical actions based on FEMA's best available data. This proposed rule would also apply a similar new elevation standard to one-to-four family residential structures, located in the 1 percent-annual-chance floodplain, that involve new construction or substantial improvement with mortgages insured by the Federal Housing Administration. This rulemaking also proposes to revise a categorical exclusion available when HUD

performs the environmental review by making it consistent with changes to a similar categorical exclusion that is available to HUD grantees or other responsible entities when they perform the environmental review. The rulemaking is part of HUD's commitment under the President's Climate Action plan. Building to these standards would increase resiliency, reduce the risk of flood loss, minimize the impact of floods on human safety, health and welfare, and promote sound, sustainable, long-term planning informed by a more accurate evaluation of risk that takes into account possible sea level rise and increased development associated with population growth.

Regulatory Impact Analysis

Increasing the required minimum elevation of HUD-assisted structures located in and around the floodplain will prevent damage caused by flooding and avoid relocation costs to tenants associated with temporary moves when HUD-assisted structures sustain flood damage and are temporarily uninhabitable. These benefits, which are realized throughout the life of HUD-assisted structures, are offset by the one-time increase in construction costs, borne only at the time of construction. Introducing a standard that requires additional freeboard above the base flood elevation takes into consideration FEMA's history of recommending freeboard as a tool for mitigation which extends several decades and provides, in HUD's view, the best assessment of risk to protect federal investments in flood zones.

In addition, the likelihood that floods in coastal areas will become more frequent and damaging due to rising sea levels in future decades necessitates a stricter standard than the one currently in place. As stated in "Global Sea Level Rise Scenarios for the United States National Climate Assessment" U.S. Department of Commerce, National

Oceanic and Atmospheric Administration, December 2012[14], federal experts have a very high confidence (greater than a 9 in 10 chance) that global mean sea level will rise at least 0.2 meters (8 inches) and no more than 2.0 meters (6.6 feet) by the year 2100. The Intergovernmental Panel on Climate Change (2013) also confirms that the sea level will continue rising throughout the 21st century.[15]

As discussed in the regulatory impact analysis that accompanies this rule, HUD estimates that requiring developers to construct or floodproof HUD-funded or insured properties to two feet above base flood elevation will increase construction costs by $12.803 million to $47.525 million. These are one-time costs which occur at the time of construction. Benefits of the increased standard include avoided damage to buildings, as measured by decreased insurance premiums, and avoided costs associated with tenants being displaced. These benefits occur annually over the life of the structures. Over a 30-year period, the present value of aggregate benefits total $12.336 million to $50.657 million assuming a 3 percent discount rate and $8.192 million to $33.317 million assuming a 7 percent discount rate.

These estimates are based on the annual production of HUD-assisted and insured structures in the floodplain and accounts for the 20 states (in addition to the District of Columbia and Puerto Rico)[16] with existing freeboard requirements. Four of these states require residential

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[14] Available at http://cpo.noaa.gov/Home/AllNews/TabId/315/ArtMID/668/ArticleID/80/Global-Sea-Level-Rise-Scenarios-for-the-United-States-National-Climate-Assessment.aspx

[15] IPCC, 2013: Summary for Policymakers. In: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

[16] Arizona, Colorado, Georgia, Illinois, Iowa, Kansas, Maryland, Maine, Michigan, Minnesota, North Dakota, Nebraska, New Jersey, Oregon, Puerto Rico and Rhode Island require base flood elevation +1 foot. The District of Columbia and Pennsylvania require base flood elevation + 1.5 feet. Indiana, Montana, New York and Wisconsin require base flood elevation + 2 feet. See http://www.floods.org/ace-files/documentlibrary/FloodRiskMngmtStandard/States_with_freeboard_and_CRS_Communities_with_Freeboard_in_Other_states_2-27-15.pdf).

structures to be constructed with the lowest floor at least two feet above the base flood elevation (Indiana, Montana, New York and Wisconsin) and 18 states and territories require residential structures to be built with the lowest floor at least one foot above the base flood elevation. The cost of compliance would be lower in these states than it would be in states that have no minimum elevation requirements above the base flood elevation. Further increase in the sea level rise or inland and riverine flooding would increase the benefits of this proposed rule. For a complete description of HUD's analysis, please see the accompanying Regulatory Impact Analysis for this rule on regulations.gov.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. HUD's statistics on developers of FHA-insured properties do not precisely correlate with SBA's size standard of a small business for the category of "Real Estate Credit," which size standard is less than $36.5 million in assets. HUD does have data on net worth and liquidity, however, and for the purposes of this discussion treats these as essentially similar to "assets" as meant in the SBA size standards.

With respect to all entities, including small entities, it is unlikely that the economic impact would be significant. As the Regulatory Impact Analysis (RIA) explains, the benefits of reduced damage offset the construction costs before taking further sea level rise into consideration. Further, small entities may benefit more since they are less likely to endure financial hardships caused by severe flooding.

Based on an engineering study conducted for FEMA[17], the construction cost of increasing the base of a new residential structure two additional feet of vertical elevation varies from 0.3 percent to 4.8 percent of the base building cost. This results in an increase of up to $5,074 per single family home and $70,769 per multi-family property located in states with no existing freeboard requirements. Consequently, this would not pose a significant burden to small entities in the single family housing development industry.

These costs are likely higher than would actually be caused by the increased standard because most HUD-assisted or insured substantial improvement projects already involve elevation to comply with the current standard, elevation to the base flood elevation (base flood elevation+0). Thus, elevating a structure an additional two feet would be marginal compared to the initial cost of elevation to the floodplain level.

For this reason, the undersigned certifies that there is no significant economic impact on small entities. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that would meet HUD's program responsibilities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection on regulations.gov and between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban

[17] See Federal Emergency Management Agency. 2013. "2008 Supplement to the 2006 Evaluation of the National Flood Insurance Program's Building Standards".

Development, 451 7th Street SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800-877-8339.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rulemaking does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempts state law within the meaning of the Executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Paperwork Reduction Act

The information collection requirements contained in this rule were reviewed by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control

Number 2506-0151. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

List of Subjects

24 CFR Part 50

Environmental impact statements.

24 CFR Part 55

Environmental impact statements, Floodplains, Wetlands.

24 CFR Part 58

Community development block grants, Environmental impact statements, Grant programs-housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs-housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, for the reasons stated in the preamble above, HUD proposes to amend 24 CFR parts 50, 55, 58, and 200 as follows:

PART 50--PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 4332; and Executive Order 11991, 3 CFR, 1977 Comp., p.123.

§ 50.4 [Amended]

2. Amend § 50.4(b)(2) by removing "(3 CFR, 1977 Comp., p. 117)" and adding in its place "as amended by Executive Order 13690, February 4, 2015 (80 FR 6423), (3 CFR, 2015 Comp., p. 6423)."

3. Revise § 50.20(a)(2)(i) to read as follows:

§ 50.20 Categorical exclusions subject to the Federal laws and authorities cited in § 50.4.

(a) * * *

(2) * * *

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;

* * * * *

PART 55--FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

4. The authority citation for part 55 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 4001-4128 and 5154a; E.O. 13690, 80 FR 6425, E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p 121.

§ 55.1 [Amended]

5. Amend § 55.1 as follows:

a. In paragraph (a)(1), add ", as amended," after "Floodplain Management"; and

b. In paragraph (a)(3), add ", as amended," after "Floodplain Management".

6. Amend § 55.2 as follows:

a. Remove "Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978)" from paragraph (a) and add in its place "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)";

b. Revise paragraphs (b)(1), (4) and (9); and

c. Add paragraphs (b)(12) and (13);

The revisions and additions read as follows:

§ 55.2 Terminology.

* * * * *

(b) * * *

(1) Coastal high hazard area means an area of special 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. On a Flood Insurance Rate Map (FIRM), this appears as zone V1-30, VE or V. FIRMs and Flood Insurance Studies (FISs) are relied upon for the designation of "coastal high hazard areas" as well as "100-year floodplains" (§ 55.2(b)(9)), "500-year floodplains" (§ 55.2(b)(4)), and "floodways" (§ 55.2(b)(5)).

(i) When FEMA provides interim flood hazard data, such as Advisory Base Flood Elevations (ABFE) or preliminary maps and studies, HUD or the responsible entity shall use the latest of these sources.

(ii) If FEMA information is unavailable or insufficiently detailed, other Federal, state, or local data may be used as "best available information" in accordance with Executive Order 11988. A base flood elevation from an interim or preliminary or non-FEMA source may not be used if it is lower than the current FIRM and FIS.

(iii) In addition to FIRMs or ABFEs, the use of data from sources such as the U.S. Global Change Research Program, National Oceanic and Atmospheric Administration, United States Army Corps of Engineers, U.S. Geological Survey, and other FEMA sources may be considered. When performing an Environmental Impact Statement (EIS), an analysis of the best available, actionable climate science, as determined by HUD or the responsible entity, must be performed using data from these sources. These sources may supplement the FIRM or ABFE in order to better minimize impacts to projects or to elevate or floodproof structures above the risk adjusted floodplain. These sources may not be used as a basis for a lower elevation than otherwise required under this part.

* * * * *

(4) 500-year floodplain means the area, including the base flood elevation, subject to inundation from a flood having a 0.2 percent chance or greater of being equaled or exceeded in any given year. (See § 55.2(b)(1) for appropriate data sources.)

* * * * *

(9) 100-year floodplain means the area subject to inundation from a flood having a one percent or greater chance of being equaled or exceeded in any given year. (See § 55.2(b)(1) for appropriate data sources.)

* * * * *

(12) FFRMS floodplain means area in which an action is proposed that:

(i) If a non-critical action, is located on a site less than two feet above the 100-year floodplain; or

(ii) If a critical action, is on a site that is either within the 500-year floodplain or less than three feet above the 100-year floodplain. The larger floodplain and higher elevation must be applied where the 500-year floodplain is mapped.

(13) Structure means a walled or roofed building, including a manufactured home and a gas or liquid storage tank that is principally above ground.

7. In § 55.11, revise table 1 to read as follows:

§ 55.11 Applicability of Subpart C decisionmaking process.

*** * * * ***

Table 1 to Part 55

Type of proposed action (new reviewable action or an amendment)[1]	**Type of Proposed Action**		
	Floodways	**Coastal High Hazard Areas**	**Wetlands or FFRMS Floodplain outside Coastal High Hazard 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(b) or (c).	Allowed only if the proposed non-critical action is a functionally dependent use and 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 § 55.1(c)(3).	Allowed if proposed noncritical action is processed under § 55.20.[2]

[1] Under E. O. 11990, the decision making process in § 55.20 only applies to Federal assistance for new construction in wetlands locations.

[2] Or those paragraphs of § 55.20 that are applicable to an action listed in § 55.12(a).

8. Revise § 55.12(c)(8) to read as follows:

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

* * * * *

(c) * * *

(8) HUD's or the responsible entity's approval of financial assistance for a project on any nonwetland site in the FFRMS floodplain for which FEMA has issued:

(i) A final Letter of Map Amendment (LOMA), final Letter of Map Revision (LOMR), or final Letter of Map Revision Based on Fill (LOMR-F) that presents information that can be used to demonstrate that the property (including ingress and egress on the property) is not located in the FFRMS floodplain; or

(ii) A conditional LOMA, conditional LOMR, or conditional LOMR-F that presents information that can be used to demonstrate that the property (including ingress and egress on the property) will not be located in the FFRMS floodplain if HUD or the responsible entity's approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;

* * * * *

9. In § 55.20, revise paragraphs (a), (b) introductory text, (b)(1), (b)(3), (c) introductory text, (c)(1) introductory text, (c)(1)(i), (d) introductory text, (d)(1) introductory text, (e), (f), (g)(1) introductory text, and (g)(1)(i) to read as follows:

§ 55.20 Decision making process.

* * * * *

(a) Step 1. (1) Determine whether the proposed action occurs in the FFRMS floodplain or results in new construction in a wetland. If the proposed action does not occur in the FFRMS floodplain or result in new construction in a wetland, then no further compliance with this part is required.

(2) The following process shall be followed by HUD (or the responsible entity) in making wetland determinations:

(i) Refer to § 55.28(a) where an applicant has submitted with its application to HUD (or to the recipient under programs subject to 24 CFR part 58) an individual Section 404 permit (including approval conditions and related environmental review).

(ii) Refer to § 55.2(b)(11) for making wetland determinations under this part.

(iii) For proposed actions occurring in both a wetland and the FFRMS floodplain, completion of the decision making process under this section is required regardless of the issuance of a Section 404 permit. In such a case, the wetland will be considered among the primary natural and beneficial functions and values of the FFRMS floodplain.

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

(1) The public notices required by paragraphs (b) and (g) of this section may be combined with other project notices wherever appropriate. Notices required under this part must be bilingual if the affected public is largely non-English speaking. In addition, all notices must be published in an appropriate local news medium or appropriate government website, and must

be sent to Federal, state, and local public agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action.

* * * * *

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

(c) Step 3. Identify and evaluate alternatives to locating the proposed action in the FFRMS floodplain or wetland. Where possible, use natural systems, ecosystem processes, and nature-based approaches when developing alternatives for consideration.

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

(i) Locations outside the FFRMS floodplain or wetland;

* * * * *

(d) Step 4. Identify the potential direct and indirect impacts associated with the occupancy or modification of the FFRMS floodplain or the wetland and the potential direct and indirect support of FFRMS floodplain and wetland development that could result from the proposed action.

(1) FFRMS floodplain evaluation. The focus of the FFRMS floodplain evaluation should be on adverse impacts to lives and property and on natural and beneficial FFRMS floodplain values. Natural and beneficial values include:

* * * * *

(e) Step 5. Design or modify the proposed action to minimize the potential adverse impacts to and from the FFRMS floodplain or the wetland and to restore and preserve its natural and beneficial functions and values. All calculations in this section of the base flood elevation and 500-year flood elevation must be made using the best available information as required by § 55.2(b)(1). For actions in the FFRMS floodplain, the required elevation described in this section must be documented on an Elevation Certificate or a Floodproofing Certificate in the Environmental Review Record prior to construction, or by such other means as HUD may from time to time direct, provided that notwithstanding any language to the contrary, the minimum elevation or floodproofing requirement shall be the FFRMS floodplain as defined in this section.

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

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

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

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

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

(4) Minimization techniques for floodplain and wetlands purposes include, but are not limited to: the use of permeable surfaces; natural landscape enhancements that maintain or restore natural hydrology through infiltration, native plant species, bioswales, rain gardens, or evapotranspiration; stormwater capture and reuse; green or vegetative roofs with drainage provisions; Natural Resource Conservation Service or other conservation easements; WaterSense products; rain barrels and grey water diversion systems; and other low impact development and

green infrastructure strategies, technologies, and techniques. For floodplain purposes, minimization also includes floodproofing and elevating structures above the required FFRMS floodplain. Where possible, use natural systems, ecosystem processes, and nature-based approaches when developing alternatives for consideration.

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

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

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

(ii) An emergency evacuation and relocation plan;

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

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

(f) Step 6. Reevaluate (or evaluate for actions under § 55.12(a)) the proposed action to determine:

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

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

(i) The reevaluation of alternatives, or initial evaluation of a no action or non-floodplain alternative for actions under § 55.12(a), shall include the potential impacts avoided or caused inside and outside the FFRMS floodplain or wetlands area. The impacts should include the protection of human life, real property, and the natural and beneficial functions and values served by the floodplain or wetland.

(ii) A reevaluation of alternatives, or initial evaluation of a no action or non-floodplain alternative for actions under § 55.12(a), under this step should include a discussion of economic costs. For floodplain areas, the cost estimates should include savings or the costs of flood insurance (where applicable); floodproofing; replacement of services or functions of critical actions that might be lost; and elevation to at least the elevation of the FFRMS floodplain, as appropriate on the applicable source under § 55.2(b)(1). For wetlands, the cost estimates should include the cost of new construction activities, including fill, impacting the wetlands, and mitigation.

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

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

* * * * *

10. Amend § 55.26 as follows:

a. Revise the section heading;

b. In paragraph (b)(2), remove the word “and”;

b. In paragraph (c), remove the period at the end of the paragraph and add in its place a semicolon and the word “and”;

c. Add paragraph (d).

The addition reads as follows:

§ 55.26 Adoption of another agency’s review under Executive orders.

* * * * *

(d) All actions must at least be elevated or floodproofed two feet above the 100-year floodplain (or to the higher of the 500-year flood elevation or 3 feet above the 100-year floodplain for Critical Actions) unless an agreement is in place to allow for the other Federal agency’s FFRMS elevation standard pursuant to 42 U.S.C. 5189g.

11. Revise § 55.27(a)(2) to read as follows:

§ 55.27 Documentation.

(a) * * *

(2) Under § 55.20(e), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain or wetland as identified in § 55.20(d) have been applied to the design for the proposed action. Prior to construction of a project in a floodplain, the documentation must include an elevation certificate or floodproofing certificate (or such other similar certification as HUD may from time to time direct) indicating the FFRMS floodplain elevation was used if required under § 55.20(e).

* * * * *

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

12. The authority citation for part 58 continues to read as follows:

Authority: 12 U.S.C. 1707 note, 1715z– 13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321–4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105–276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

13. Revise § 58.5(b)(1) to read as follows:

§ 58.5 Related Federal laws and authorities.

***** ***** ***** ***** *****

(b) ***** ***** *****

(1) Executive Order 11988, Floodplain Management, as amended by Executive Order 13690, February 4, 2015 (80 FR 6425), 3 CFR, 2015 Comp., p. 6425, as interpreted in HUD regulations at 24 CFR part 55.

* * * * *

14. Revise § 58.43(a) to read as follows:

§ 58.43 Dissemination and/or publication of the findings of no significant impact.

(a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community or on an appropriate government website. If the notice is not published, it must also

be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

15. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1702-1715z-21; 42 U.S.C. 3535(d).

16. In § 200.926, add paragraph (a)(3) to read as follows:

§ 200.926 Minimum property standards for one and two family dwellings.

(a) * * *

(3) Applicability of standards to substantial improvement. The standards in § 200.926d(c)(4)(i) through (iii) are also applicable to structures that are approved for insurance or other benefits prior to the start of substantial improvement, as defined in § 55.2(b)(10) of this title.

* * * * *

17. In § 200.926d, revise paragraphs (c)(4)(i) through (iii), remove paragraph (c)(4)(iv), and redesignate paragraphs (c)(4)(v) and (c)(4)(vi) as paragraphs (c)(4)(iv) and (c)(4)(v), respectively.

The revisions read as follows:

§ 200.926d Construction requirements.

* * * * *

(c) * * *

(4) * * *

(i) *Residential structures located in Special Flood Hazard Areas*. The elevation of the lowest floor shall be at least two feet above the base flood elevation (see 24 CFR 55.2 for appropriate data sources).

(ii) *Residential structures located in FEMA-designated "coastal high hazard areas".* (A) Basements or any permanent enclosure of space below the lowest floor of a structure are prohibited.

(B) Where FEMA has determined the base flood level without establishing stillwater elevations, the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) and its horizontal supports shall be at least two feet above the base flood elevation.

(iii) *New construction or substantial improvement*. (A) In all cases in which a Direct Endorsement (DE) mortgagee or a Lender Insurance (LI) mortgagee seeks to insure a mortgage on a one- to four-family dwelling that is newly constructed or which undergoes a substantial improvement, as defined in § 55.12(b)(10) of this title (including a manufactured home that is newly erected or undergoes a substantial improvement) that was processed by the DE or LI mortgagee, the DE or LI mortgagee must determine whether the property improvements (dwelling and related structures/equipment essential to the value of the property and subject to flood damage) are located on a site that is within a Special Flood Hazard Area, as designated on maps of the Federal Emergency Management Agency. If so, the DE mortgagee, before submitting the application for insurance to HUD, or the LI mortgagee, before submitting all the required data regarding the mortgage to HUD, must obtain:

(1) A final Letter of Map Amendment (LOMA);

(2) A final Letter of Map Revision (LOMR); or

(3) A signed Elevation Certificate documenting that the lowest floor (including basement) of the property improvements is at least two feet above the base flood elevation as determined by FEMA's best available information.

(B) Under the DE program, these mortgages are not eligible for insurance unless the DE mortgagee submits the LOMA, LOMR, or Elevation Certificate to HUD with the mortgagee's request for endorsement.

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Dated: September 27, 2016.

Harriet Tregoning, Principal Deputy Assistant Secretary for Community Planning and Development

[FR-5717-P-01]

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