




OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

MEMORANDUM FOR: Adrienne Todman, Deputy Secretary, SD

FROM: 
Marion McFadden, Principal Deputy Assistant Secretary for
Community Planning and Development, D

SUBJECT: Environmental Assessment and Finding of No Significant Impact
under the National Environmental Policy Act (NEPA) – Floodplain
Management and Protection of Wetlands; Minimum Property
Standards for Flood Hazard Exposure; Building to the Federal Flood
Risk Management Standard (FR-6272-P-01)

It is the finding of the Office of Environment and Energy (OEE) that the attached rulemaking FR-6272-P-01 Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard does not constitute a major Federal action having an individually or cumulatively significant effect on the human environment and therefore does not require the preparation of an environmental impact statement. The rulemaking revises HUD regulations at 24 CFR part 55 implementing floodplain management requirements under Executive Order 11988 and wetland protection policies under Executive Order 11990. With this rule, HUD's floodplain management under E.O. 11988 would be brought into compliance with Executive Order 13690, Establishing a Federal Flood Risk Management Standard [FFRMS] and a Process for Further Soliciting and Considering Stakeholder Input. In addition to addressing the FFRMS, the rule also revises HUD policies applicable to proposed activities in or near the regulatory floodway, in order to ensure the resilience and safety of HUD projects while permitting compatible floodway uses and preservation of existing affordable housing; clarifies wetland protection processes; updates instructions regarding the 8-step decisionmaking process to facilitate better analysis and improve climate resilience; and reorganizes 24 CFR part 55 to establish a more logical order and clarify compliance requirements.

This proposed rule would also revise the elevation requirements for HUD's Minimum Property Standards at 24 CFR part 200 for one-to-four-unit housing under HUD mortgage insurance and under low-rent public housing programs, as well as categorical exclusion and public notice posting requirements under 24 CFR part 50 and part 58.

FFRMS Floodplain Identification

To implement the FFRMS, the rule proposes adding FFRMS floodplain identification methods to 24 CFR part 55. The FFRMS floodplain as delineated by these methods would be used for floodplain management, decisionmaking and minimization of floodplain impacts in all HUD-assisted projects to which part 55 decisionmaking applies.

For non-critical actions, the FFRMS floodplain would be defined according to a climate-informed science approach (CISA), where comprehensive, HUD-approved flood risk maps of the jurisdiction have been developed using best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flood levels based on climate science. Where such maps are unavailable, the FFRMS floodplain would be defined based on the 0.2-percent-annual-chance flood (500-year floodplain), if mapped, as identified on Federal Emergency Management Agency (FEMA) flood insurance rate maps (FIRMs). Finally, if neither CISA nor 0.2-percent-annual-chance floodplain mapping is available, the Freeboard Value Approach (FVA) would define the height of the FFRMS floodplain for non-critical actions as those areas that result from adding an additional 2 feet to the base flood elevation (1-percent-annual-chance or 100-year floodplain) on FEMA FIRMs or, if available, FEMA preliminary or pending maps or advisory base flood elevations.

For critical actions, the FFRMS floodplain would be based on critical action elevations identified in CISA mapping, if available. Where CISA mapping is unavailable, but the 0.2-percent-annual-chance floodplain is mapped, the FFRMS floodplain would be either the 0.2-percent-annual-chance floodplain or the area that results from adding an additional three feet to the base flood elevation, whichever is higher. Where neither of those sources are available, the FFRMS floodplain would be defined using the FVA as an additional three feet above base flood elevation.

Use of the higher FFRMS floodplain would expand the horizontal boundary of the flood risk area within which a proposed action must undergo a floodplain decision making process to determine if there are practicable alternatives to locating the action in the floodplain and, if not, to minimize floodplain impacts. Currently, the floodplain decision making process applies to proposed non-critical actions within a Special Flood Hazard Area (SFHA) (i.e., an area within the 1-percent-annual-chance floodplain), and within the 0.2-percent-annual-chance floodplain for critical actions, as indicated on FEMA FIRMs or more recent FEMA data. Under the proposed rule, the floodplain area subject to the decisionmaking process would be expanded to include the FFRMS floodplain as defined using the approaches defined above.

FFRMS Elevation

The rule would also clarify that substantially improved¹ or newly constructed structures² must be elevated to the applicable FFRMS floodplain level. For noncritical nonresidential structures, or residential structures with no dwelling units and no residents below the FFRMS floodplain, the structure may, alternatively, be floodproofed to this level.

Minimum Property Standards Elevation

This rule also proposes to 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 1-percent-annual-chance floodplain be built at least 2 feet above the base flood elevation as determined by best available information.

Decision-making Process Improvements and Organization

In addition, the rule would clarify and expand definitions to support the elevated flood standard and specify sources of flood risk and flood mitigation strategies to be analyzed. HUD also seeks to improve the quality and effectiveness of public notification of floodplain hazards with content that is targeted to resident needs and concerns and to explain more clearly the appropriate sources and methods used for wetlands identification. Within the 8-step process, the proposed rule discusses alternatives that are relevant to the activity types assisted by HUD programs and incorporates minimization strategies that, based on HUD experience, are most effective. Finally, within the framework of increased flood resilience, the rule would establish exceptions to floodway prohibitions where compatible uses are feasible and would provide flexibility for existing HUD-supported housing that can be successfully mitigated against flood impacts.

¹ *Substantial improvement* means either: (A) 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; or (B) Any repair, reconstruction, modernization or improvement of a structure that results in an increase of more than twenty percent in the number of dwelling units in a residential project or in the average peak number of customers and employees likely to be on-site at any one time for a commercial or industrial project. Substantial improvement may not be defined to include either: (A) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions, or (B) Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places. Structural repairs, reconstruction, or improvements not meeting this definition are considered "minor improvements". (24 CFR 55.2(b)(10); relocated in proposed rule to § 55.2(b)(13).)

² *Structure* means a walled and roofed building, as defined in Federal Emergency Management Agency regulations at 44 CFR 59.1. (Proposed rule; § 55.2(b)(11).)

Categorical Exclusion

This rule also proposes to amend § 50.20(a)(2)(i) to revise the categorical exclusion from further environmental review under NEPA for minor rehabilitation of one- to four-unit residential properties. Specifically, 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. In 2013, HUD removed the footprint trigger from the corresponding categorical exclusion at § 58.35(a)(3)(i) for rehabilitations reviewed by responsible entities. This change will make the review standard the same regardless of whether HUD or a responsible entity is performing the review.

Permitting Online Posting

This proposed rule would update § 50.23, 58.43, 58.45, and 58.59 to allow public notices to be posted on an appropriate government website as an alternative to publication in local news media if the website is accessible to individuals with disabilities and provides meaningful access to individuals with Limited English Proficiency. This change would make parts 50 and 58 consistent with part 55, which would revise § 55.20 to allow public notices required as part of the 8-step process to be posted on a government website instead of a newspaper.

Alternatives Considered

In developing the proposed policy action, HUD considered floodplain management alternatives to implement EO 13690, including use of the CISA, the 0.2-percent-annual chance flood approach, and the FVA. HUD's selected alternative incorporates all three of these methods, with prioritization on the use of CISA. HUD selected this alternative because it provides the flexibility to address project-specific constraints based on the data available for a proposed site while providing the greatest reduction in flood risk within these limitations.

Finding of No Significant Impact

This office finds that the proposed rule would not have a significant impact on the human environment for several reasons. First, the changes would provide further protection of floodplains and lead to developments that are better protected from larger floods as well as impacts from sea level rise. Prioritization of a climate-informed science approach to flood risk management and encouragement for local communities to analyze flood risk based on local and regional impacts of climate change and future development as projected in credible data sources would have environmental planning benefits within housing and community development programs and planning efforts in the community as a whole. For projects subject to Part 55, a larger floodplain would be examined for possible avoidance due to the expansion of the horizontal floodplain of interest commensurate with the vertical increase in elevation requirements above the current BFE. This should cause some new construction and future losses to be avoided within the expanded floodplain area where the elevation costs prove to be too high.

In addition, projects that are newly constructed or substantially improved in the expanded floodplain would meet higher elevation or floodproofing requirements. This would result in a lower likelihood or lesser extent of flood damage to the structures, as well as a lower risk of injury, death, or disease for occupants due to rising waters, mold, and distribution into dwellings of contaminants and bacteria found in floodwaters. These changes would result in fewer and less severe adverse impacts on the human environment in furtherance of NEPA's goals due to greater flood protection.

The proposed rule also limits the possibility of unforeseen significant impacts due to policy changes because it builds on and strengthens existing elevation requirements rather than creating wholly new ones. Given existing provisions under the Flood Disaster Protection Act of 1973 for mandatory purchase of flood insurance for federally assisted properties in the SFHA, HUD-assisted new construction or substantial improvement in the SFHA is already subject to a requirement to build or rehabilitate structures to the base flood elevation according to National Flood Insurance Program rules. The FFRMS and HUD's proposed rule would only strengthen this existing requirement by using the FFRMS floodplain to determine elevation requirements.

Additionally, 24 CFR part 55 already includes examples of impact minimization practices and sources of expertise, and these are strengthened and made clearer in order to support the new FFRMS standard. HUD intends to rely on CISA tools and implementation resources being developed by a subgroup of federal agency subject matter experts of the White House Flood Resilience Interagency Working Group to implement CISA analysis. This analysis will integrate current and future changes in flood levels based on climate science, thus allowing reviewers to better address impacts. The changes within the proposed rule will therefore result in better reviews that avoid adverse impacts to the human environment.

This rulemaking would not impact the requirement under 24 CFR 50.3(h) or 24 CFR 58.22 that no commitment or expenditure for physical activities or property acquisition may be made until