after the single point of contact receives the explanation; or

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

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

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

(a) The Secretary is responsible for—

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

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

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

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

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

§ 52.12 [Reserved]

PART 55—FLOODPLAIN MANAGEMENT

Subpart A—General

Sec.
55.1 Purpose and basic responsibility.
55.2 Terminology.
55.3 Assignment of responsibilities.

Subpart B—Application of Executive Order on Floodplain Management

55.10 Environmental review procedures under 24 CFR parts 50 and 58.
55.11 Applicability of subpart C decision making process.
55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

Subpart C—Procedures for Making Determinations on Floodplain Management

55.20 Decision making process.
55.21 Notification of floodplain hazard.
55.22 Conveyance restrictions for the disposition of multifamily real property.
55.23 [Reserved]
55.24 Aggregation.
55.25 Areawide compliance.
55.26 Adoption of another agency's review under the executive orders.
55.27 Documentation.

AUTHORITY: 42 U.S.C. 3535(d) and 4001–4128; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117.

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

Subpart A—General

§ 55.1 Purpose and basic responsibility.

(a) This part implements the requirements of Executive Order 11988, Floodplain Management, and employs the principles of the Unified National Program for Floodplain Management. It covers the proposed acquisition, construction, improvement, disposition, financing and use of properties located in a floodplain for which approval is required either from HUD under any applicable HUD program or from a grant recipient subject to 24 CFR part 58. This part does not prohibit approval of such actions (except for certain actions in high hazard areas), but provides a consistent means for implementing the Department's interpretation of the executive order in the project approval decision making processes of HUD and of grant recipients subject to 24 CFR part 58. The implementation of Executive Order 11988 under this part shall be conducted by HUD, for Department-administered programs subject to environmental review under 24 CFR part 50, and by authorized recipients of HUD financial assistance subject to environmental review under 24 CFR part 58.

(b) Under section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), proposed HUD financial assistance (including mortgage insurance) for acquisition or construction purposes in any "area having special flood hazards" (a flood zone designated by the Federal Emergency Management Agency (FEMA)) shall not be approved in communities identified by FEMA as eligible for flood insurance but which are not participating in the National Flood Insurance Program. This prohibition only applies to proposed HUD financial assistance in a FEMA-designated area of special flood hazard one year after the community has been formally notified by FEMA of the designation of the affected area. This prohibition is not applicable to HUD financial assistance in the form of formula grants to states, including financial assistance under the State-administered CDBG Program (24 CFR part 570, subpart I) and the State-administered Rental Rehabilitation Program (24 CFR 511.51), Emergency Shelter Grant amounts allocated to States (24 CFR parts 575 and 576), and HOME funds provided to a state under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701–12839).

(c) Except with respect to actions listed in § 55.12(c), no HUD financial assistance (including mortgage insurance) may be approved after May 23, 1994 with respect to:

(1) Any action, other than a functionally dependent use, located in a floodway;

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

(3) Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area or is a functionally dependent use. An action will be considered to be designed for location in a coastal high hazard area if:

(i) In the case of new construction or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

(ii) In the case of existing construction (including any minor improvements):

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

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

§ 55.2 Terminology.

(a) With the exception of those terms defined in paragraph (b) of this section, the terms used in this part shall follow the definitions contained in section 6 of Executive Order 11988 and in the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978) issued by the Water Resources Council; and the terms. "criteria" and "Regular Program", shall follow the definitions contained in FEMA regulations at 44 CFR 59.1.

(b) The definitions of the following terms in Executive Order 11988 and related documents affecting this part are modified for purposes of this part:

(1) *Coastal high hazard area* means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) under FEMA regulations as Zone V1–30, VE, or V. (FIRMs as well as Flood Hazard Boundary Maps (FHBM) shall also be relied on for the delineation of "100-year floodplains" (§ 55.2(b)(8)), "500-year floodplains" (§ 55.2(b)(3)), and "floodways" (§ 55.2(b)(4)).

(2)(i) *Critical action* means any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend

the useful life of those structures or facilities that:

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

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

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

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

(3) *500-year floodplain* means the minimum floodplain of concern for Critical Actions and is the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year. (See §55.2(b)(1) for appropriate data sources.)

(4) *Floodway* means that portion of the floodplain which is effective in carrying flow, where the flood hazard is generally the greatest, and where water depths and velocities are the highest. The term "floodway" as used here is consistent with "regulatory floodways" as identified by FEMA. (See §55.2(b)(1) for appropriate data sources.)

(5) *Functionally dependent use* means a land use that must necessarily be conducted in close proximity to water (e.g., a dam, marina, port facility, water-front park, and many types of bridges).

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

(7) *100-year floodplain* means the floodplain of concern for this part and is the area subject to a one percent or greater chance of flooding in any given year. (See §55.2(b)(1) for appropriate data sources.)

(8)(i) *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 onsite at any one time for a commercial or industrial project.

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

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

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

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

§55.3 Assignment of responsibilities.

(a)(1) *The Assistant Secretary for Community Planning and Development* (CPD) shall oversee: (i) The Department's implementation of the order and this part in all HUD programs, and

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

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

(b) *Other HUD Assistant Secretaries, the General Counsel, and the President of the Government National Mortgage Association (GNMA)* shall: (1) Ensure compliance with this part for all actions

under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain;

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

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

(4) Incorporate in departmental regulations, handbooks, and project and site standards those criteria, standards, and procedures necessary to comply with the requirements of this part.

(c) *Recipient Certifying Officer.* In accordance with section 9 of Executive Order 11988, Certifying Officers of grant recipients administering activities subject to 24 CFR part 58 shall: (1) Comply with this part in carrying out HUD-assisted programs, and

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

Subpart B—Application of Executive Order on Floodplain Management

§ 55.10 Environmental review procedures under 24 CFR parts 50 and 58.

(a) Where an environmental review is required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, and 24 CFR part 50 or part 58, compliance with this part shall be completed before the completion of an environmental assessment (EA) including a finding of no significant environmental impact (FONSI), or an environmental impact statement (EIS), in accordance with the decision points listed in 24 CFR 50.17 (a) through (h), or before the preparation of an EA under 24 CFR 58.40 or an EIS under 24 CFR 58.36. For types of proposed actions that are categorically excluded from National Environmental Policy Act (NEPA) requirements under 24 CFR part 50 (or part 58), compliance with this part shall be completed before the Department's initial (SAMA, conditional, etc.) approval (or the conditional commitment or approval by a grant recipient subject to 24 CFR part 58) of proposed actions in a floodplain.

(b) The categorical exclusion of certain proposed actions from environmental review requirements under NEPA and 24 CFR parts 50 and 58 (see 24 CFR 50.20 and 58.35) does not exclude those actions from compliance with this part.

§ 55.11 Applicability of subpart C decision making process.

(a) Before reaching the decision points described in § 55.10(a), HUD (for Department-administered programs) or the grant recipient (for HUD financial assistance subject to 24 CFR part 58) shall determine whether Executive Order 11988 and this part apply to the proposed action.

(b) If Executive Order 11988 applies, the approval of a proposed action or initial commitment shall be made in accordance with this part. The primary purpose of Executive Order 11988 is to "avoid direct or indirect support of floodplain development."

(c) The following table indicates the applicability, by location and type of action, of the decision making process for implementing Executive Order 11988 under subpart C of this part.

TABLE 1

Type of proposed action (new reviewable action or an amendment)	Type of proposed location			
	Floodways	Coastal high hazard areas	100-year floodplain outside high hazard area	Area between 100- and 500-year floodplain
Critical actions as defined in § 55.2(b)(2).	Critical actions not allowed.	Critical actions not allowed.	Allowed if the proposed critical action is processed under § 55.20 [1].	Allowed if the proposed critical action is processed under § 55.20 [1].

TABLE 1—Continued

Type of proposed action (new reviewable action or an amendment)	Type of proposed location			
	Floodways	Coastal high hazard areas	100-year floodplain outside high hazard area	Area between 100- and 500-year floodplain
Non-critical actions not excluded under §55.12 (b) or (c).	Allowed only if the proposed action is a functionally dependent use and processed under §55.20 [1].	Allowed only if the proposed action: (1) Is either (a) designed for location in a coastal high hazard area or (b) a functionally dependent use; and (2) is processed under §55.20 [1].	Allowed if the proposed action is processed under §55.20 [1].	Any non-critical action is allowed without processing under this part.

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

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

(a) The decision making steps in §55.20 (b), (c) and (g) (steps 2, 3 and 7) shall not apply to the following categories of proposed actions: (1) HUD actions involving the disposition of HUD-acquired multifamily housing projects or "bulk sales" of HUD-acquired one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24).

(2) HUD's actions under section 223(f) of the National Housing Act (12 U.S.C. 1715n(f)) for the purchase or refinancing of existing multifamily housing projects (including hospitals, nursing homes, board and care facilities, and intermediate care facilities) in communities that are in good standing under the NFIP.

(3) HUD mortgage insurance actions for the repair, rehabilitation, modernization or improvement of existing multifamily housing projects (including nursing homes, board and care facilities and intermediate care facilities) and existing one- to four-family properties, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the number of units is not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, and the footprint of the structure and paved areas is not significantly increased.

(b) The decision making process in §55.20 shall not apply to the following categories of proposed actions: (1) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway or coastal high hazard area;

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for "substantial improvement" under §55.2(b)(8);

(3) HUD actions involving the disposition of individual HUD-acquired, one- to four-family properties; and

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

(c) This part shall not apply to the following categories of proposed HUD actions:

(1) HUD-assisted exempt activities described in 24 CFR 58.34;

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

(3) HUD's implementation of the full disclosure and other registration requirements of the Interstate Land Sales Disclosure Act (15 U.S.C. 1701—1720);

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

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

(6) HUD's approval of a project site, an incidental portion of which is situated in an adjacent floodplain, but only if: (i) The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, etc.) do not occupy or modify the 100-year floodplain or the 500-year floodplain (for Critical Actions);

(ii) Appropriate provision is made for site drainage; and

(iii) A covenant or comparable restriction is placed on the property's continued use to preserve the floodplain;

(7) An action for interim assistance, assistance under the section 232(i) Fire Safety Equipment Loan Insurance Program, or emergency activities involving imminent threats to health and safety, and limited to necessary protection, repair or restoration activities to control the imminent risk or damage;

(8) HUD's approval of financial assistance for a project on any site in a floodplain for which FEMA has issued:

(i) A final Letter of Map Amendment (LOMA) or final Letter of Map Revision (LOMR) that removed the property from a FEMA-designated floodplain location; or

(ii) A conditional LOMA or conditional LOMR if the HUD approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;

(9) HUD's acceptance of a housing subdivision approval action by the Department of Veterans Affairs or Farmers Home Administration in accordance with section 535 of the Housing Act of 1949 (42 U.S.C. 1490o);

(10) An action that was, on May 23, 1994, already approved by HUD (or a grant recipient subject to 24 CFR part 58) and is being implemented (unless approval is requested for a new reviewable action), provided that §§ 55.21 and 55.22 apply where the covered transactions under those sections have not yet occurred, and that any hazard minimization measures required by HUD (or a grant recipient subject to 24 CFR part 58) under its implementation of Executive Order 11988 before May 23, 1994 shall be completed;

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

(12) Secondary mortgage operations of the Government National Mortgage Association (GNMA).

[59 FR 19107, Apr. 21, 1994, as amended at 59 FR 33199, June 28, 1994; 62 FR 15802, Apr. 2, 1997]

Subpart C—Procedures for Making Determinations on Floodplain Management

§ 55.20 Decision making process.

The decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives. The steps to be followed in the decision making process are:

(a) *Step 1.* Determine whether the proposed action is located in a 100-year floodplain (or a 500-year floodplain for a Critical Action). If the proposed action would not be conducted in one of those locations, then no further compliance with this part is required.

(b) *Step 2.* Notify the public at the earliest possible time of a proposal to consider an action in a floodplain (or in the 500-year floodplain for a Critical Action), 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 printed news medium, 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.

(2) A minimum of 15 calendar days shall be allowed for comment on the public notice.

(3) A notice under this paragraph shall state: the name, proposed location and description of the activity; the total number of acres of floodplain involved; and the HUD official and phone number to contact for information. The notice shall indicate the hours and the HUD office at which a full description of the proposed action may be reviewed.

(c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a floodplain (or the 500-year floodplain for a Critical Action).

(1) The consideration of practicable alternatives to the proposed site or method may include:

(i) Locations outside the floodplain (or 500-year floodplain for a Critical Action);

(ii) Alternative methods to serve the identical project objective; and

(iii) A determination not to approve any action.

(2) In reviewing practicable alternatives, the Department or a grant recipient subject to 24 CFR part 58 shall consider feasible technological alternatives, hazard reduction methods and related mitigation costs, and environmental impacts.

(d) *Step 4.* Identify the potential direct and indirect impacts associated with the occupancy or modification of the floodplain (or 500-year floodplain for a Critical Action).

(e) *Step 5.* Where practicable, design or modify the proposed action to minimize the potential adverse impacts within the floodplain (including the 500-year floodplain for a Critical Action) and to restore and preserve its natural and beneficial values. All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) and modified to include:

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

(2) An emergency evacuation and relocation plan;

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

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

(f) *Step 6.* Reevaluate the proposed action to determine:

(1) Whether it is still practicable in light of its exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to other floodplains, and its potential to disrupt floodplain values; and

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

(g) *Step 7.* (1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the floodplain (or the 500-year floodplain for a Critical Action), publish a final notice that includes:

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

(ii) A list of the alternatives considered; and

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

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

(h) *Step 8.* Upon completion of the decision making process in Steps 1 through 7, implement the proposed action. There is a continuing responsibility to ensure that the mitigating measures identified in Step 7 are implemented.

§ 55.21 Notification of floodplain hazard.

For HUD programs under which a financial transaction for a property located in a floodplain (a 500-year floodplain for a Critical Action) is guaranteed, approved, regulated or insured, any private party participating in the transaction and any current or prospective tenant shall be informed by HUD (or by HUD's designee, e.g., a mortgagor) or a grant recipient subject to 24 CFR part 58 of the hazards of the floodplain location before the execution of documents completing the transaction.

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

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

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

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

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

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

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

§ 55.23 [Reserved]

§ 55.24 Aggregation.

Where two or more actions have been proposed, require compliance with subpart C of this part, affect the same floodplain, and are currently under review by the Department (or by a grant recipient subject to 24 CFR part 58), individual or aggregated approvals may be issued. A single compliance review and approval under this section is subject to compliance with the decision making process in § 55.20.

§ 55.25 Areawide compliance.

(a) A HUD-approved areawide compliance process may be substituted for individual compliance or aggregated compliance under § 55.24 where a series of individual actions is proposed or contemplated in a pertinent area for HUD's examination of floodplain hazards. In areawide compliances, the area for examination may include a sector of, or the entire, floodplain—as relevant to the proposed or anticipated actions. The areawide compliance process shall be in accord with the decision making process under § 55.20.

(b) The areawide compliance process shall address the relevant executive orders and shall consider local land use planning and development controls (e.g., those enforced by the community for purposes of floodplain management under the National Flood Insurance Program (NFIP)) and applicable state programs for floodplain management. The process shall include the development and publication of a strategy that identifies the range of development and mitigation measures under which the proposed HUD assistance may be approved and that indicates the types of actions that will not be approved in the floodplain.

(c) Individual actions that fit within the types of proposed HUD actions specifically addressed under the areawide compliance do not require further compliance with § 55.20 except that a determination by the Department or a grant recipient subject to 24 CFR part 58 shall be made concerning whether the individual action accords with the areawide strategy. Where the individual action does not accord with the

areawide strategy, specific development and mitigation measures shall be prescribed as a condition of HUD's approval of the individual action.

(d) Areawide compliance under the procedures of this section is subject to the following provisions: (1) It shall be initiated by HUD through a formal agreement of understanding with affected local governments concerning mutual responsibilities governing the preparation, issuance, implementation, and enforcement of the areawide strategy;

(2) It may be performed jointly with one or more Federal departments or agencies, or grant recipients subject to 24 CFR part 58 that serve as the responsible Federal official;

(3) It shall establish mechanisms to ensure that: (i) The terms of approval of individual actions (e.g., concerning structures and facilities) will be consistent with the areawide strategy;

(ii) The controls set forth in the areawide strategy are implemented and enforced in a timely manner; and

(iii) Where necessary, mitigation for individual actions will be established as a condition of approval.

(4) An open scoping process (in accordance with 40 CFR 1501.7) shall be used for determining the scope of issues to be addressed and for identifying significant issues related to housing and community development for the floodplain;

(5) Federal, state and local agencies with expertise in floodplain management, flood evacuation preparedness, land use planning and building regulation, or soil and natural resource conservation shall be invited to participate in the scoping process and to provide advice and comments; and

(6) Eligibility for participation in and the use of the areawide compliance must be limited to communities that are in the Regular Program of the National Flood Insurance Program and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24), thereby demonstrating a capacity for and commitment to floodplain management standards sufficient to perform responsibilities under this part.

(7) An expiration date (not to exceed ten years from the date of the formal adoption by the local governments) for HUD approval of areawide compliance under this part must be stated in the agreement between the local governments and HUD. In conjunction with the setting of an expiration date, a mechanism for HUD's reevaluation of the appropriateness of areawide compliance must be provided in the agreement.

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

If a proposed action covered under this part is already covered in a prior review performed under the executive order by another agency, that review may be adopted by HUD or by a grant recipient authorized under 24 CFR part 58, provided that:

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

(b) The adopting agency makes a finding that:

(1) The type of action currently proposed is comparable to the type of action previously reviewed by the other agency; and

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

(c) As a condition of approval, mitigation measures similar to those prescribed in the previous review shall be required of the current proposed action.

§55.27 Documentation.

(a) For purposes of compliance with §55.20, the responsible HUD official who would approve the proposed action (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) shall require that the following actions be documented: (1) Under §55.20(c), practicable alternative sites have been considered outside the floodplain, but within the local housing market area, the local public utility service area, or the jurisdictional boundaries of a recipient unit of general local government (as defined in 24 CFR 570.3), whichever geographic area is more appropriate to the proposed HUD action. Actual sites under review must be identified and the reasons for the non-selection of those sites as practicable alternatives must be described; and

(2) Under §55.20(e), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain as identified in §55.20(d) have been applied to the design for the proposed action.

(b) For purposes of compliance with §55.24, §55.25, or §55.26 (as appropriate), the responsible HUD official (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) who would approve the proposed action shall require documentation of compliance with the required conditions.

(c) Documentation of compliance with this part (including copies of public notices) must be attached to the environmental assessment, the environmental impact statement or the compliance record and be maintained as a part of the project file. In addition, for environmental impact statements, documentation of compliance with this part must be included as a part of the record of decision (or environmental review record for grant recipients subject to 24 CFR part 58).

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

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

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

Subpart B—General Policy: Responsibilities of Responsible Entities

58.10 Basic environmental responsibility.
58.11 Legal capacity and performance.
58.12 Technical and administrative capacity.
58.13 Responsibilities of the certifying officer.
58.14 Interaction with State, Federal and non-Federal entities.
58.15 Tiering.
58.17 Historic preservation requirements for prior section 17 grants.
58.18 Responsibilities of States assuming HUD responsibilities.

Subpart C—General Policy: Environmental Review Procedures

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

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

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

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

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

Subpart F—Environmental Review Process: Environmental Impact Statement Determinations

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

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

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

Subpart H—Release of Funds for Particular Projects

58.70 Notice of intent to request release of funds.
58.71 Request for release of funds and certification.
58.72 HUD or State actions on RROFs and certifications.
58.73 Objections to release of funds.