



## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2023-0027]

### Programmatic/Class Floodplain Review Procedures for Specific Preparedness Grant Projects

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is publishing this notice to document and request comments on its determination that a programmatic/class review is appropriate for six categories of activities in specific grant programs that do not have an adverse impact individually or cumulatively on floodplain values placing property and persons at risk.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by Docket ID FEMA-2023-0027 via the Federal eRulemaking Portal at <https://www.regulations.gov>. Search for and follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Frederick Holycross, Coordinator, Grant Programs Directorate, Environmental Planning and Historic Preservation, FEMA, [frederick.holycross@fema.dhs.gov](mailto:frederick.holycross@fema.dhs.gov), or 202-212-8007.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

Interested persons are invited to participate in this “Class Review Procedures for Specific Preparedness Grant Projects” by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, include the Docket ID FEMA-2023-0027 indicate the specific section of this document to which each comment applies, and give the reason for each comment. All submissions may be posted, without change, to the Federal e-Rulemaking Portal at <http://www.regulations.gov> and will include any personal information you provide. Therefore, submitting this information makes it public. For more about privacy and the docket, visit <http://www.regulations.gov>.

Viewing comments and documents: For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at <http://www.regulations.gov>.

### **II. Background**

FEMA’s floodplain management regulations are found at Part 9 of the Code of Federal Regulations. Part 9 sets forth the policy, procedure and responsibilities to implement and enforce Executive Order 11988, Floodplain Management.<sup>1</sup> Part 9 sets forth an 8-step process which FEMA must follow when taking actions in floodplains<sup>2</sup> which have the potential to affect floodplains or their occupants, or which are subject to potential harm by location in floodplains.<sup>3</sup>

For such actions, FEMA is required to take the following steps: (1) determine whether the proposed action is located in the 100-year floodplain (500-year floodplain for critical actions), and whether it has the potential to affect or be affected by the floodplain; (2) notify the

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<sup>1</sup> “This regulation sets forth the policy, procedure and responsibilities to implement and enforce Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands.” [44 CFR 9.1](#).

<sup>2</sup> The 8-step process set forth in 44 CFR part 9 also governs agency actions that take place in wetlands.

<sup>3</sup> 44 CFR 9.5(a)(1).

public at the earliest possible time of the intent to carry out an action in a floodplain, and involve the affected and interested public in the decision-making process; (3) identify and evaluate practicable alternatives to locating the proposed action in a floodplain (including alternative sites, actions and the “no action” option); (4) identify the potential direct and indirect impacts associated with the occupancy or modification of floodplains and the potential direct and indirect support of floodplain development that could result from the proposed action; (5) minimize the potential adverse impacts and support to or within floodplains to be identified under Step 4, restore and preserve the natural and beneficial values served by floodplains; (6) reevaluate the proposed action to determine first, if it is still practicable in light of its exposure to flood hazards, the extent to which it will aggravate the hazards to others, and its potential to disrupt floodplain values and second, if alternatives preliminarily rejected at Step 3 are practicable in light of the information gained in Steps 4 and 5; (7) prepare and provide the public with a finding and public explanation of any final decision that the floodplain is the only practicable alternative; and (8) review the implementation and post-implementation phases of the proposed action to ensure that the minimization requirements are fully implemented.<sup>4</sup>

FEMA completes the 8-step process for each action it is taking in a floodplain as part of the comprehensive environmental and historic preservation (EHP) compliance reviews that are required for all projects funded under its disaster and non-disaster grant programs.<sup>5</sup> The implementing guidance for E.O. 11988 (Guidelines) allows for an altered or shortened decision-making floodplain evaluation “class review” process for certain routine or recurring actions, known as repetitive actions.<sup>6</sup> Class reviews or programmatic approaches allow for efficient and effective ways to meet EHP requirements, including floodplain reviews.

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<sup>4</sup> 44 CFR 9.6.

<sup>5</sup> See generally FEMA’s website at Environmental Planning and Historic Preservation for a description of the EHP process and the applicable regulations, directives, and legal mandates which govern it. (Last accessed on 6/16/2023).

<sup>6</sup> See 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 at 44.

In considering whether to undertake such a review, the Guidelines instruct agencies to examine past actions that have been reviewed on an individual basis with public notice and opportunity to comment.<sup>7</sup> If the individual reviews have indicated uniformly that the actions would not have an adverse impact individually or cumulatively on floodplain values placing property and persons at risk, and little or no public comments to the contrary were received, a class review to streamline agency coordination and processing efforts may be appropriate.<sup>8</sup> Agencies may conduct class reviews of routine or recurring actions when: (1) consideration of whether to locate in a floodplain is substantially similar; (2) there is no practicable alternative(s), consistent with any Executive Orders and applicable agency codes, to siting in a floodplain for each action within the class; and (3) all practical measures to minimize harm to the floodplain are included in the review criteria that, if followed, will minimize any adverse impacts that may be associated with the individual actions covered in the class review.<sup>9</sup>

### **III. Floodplain Review Procedures for Specific Preparedness Grant Projects**

FEMA funds certain routine or repetitive certain routine or repetitive small-scale activities under a number of preparedness grant programs administered by its Grant Programs Directorate (GPD).<sup>10</sup> FEMA reviewed six project categories from thirteen GPD grant programs and determined they were appropriate for the shortened class review procedures. Specifically, FEMA's determination applies to the following six categories of activities funded under thirteen preparedness grant programs:<sup>11</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> GPD's mission is to deliver and support grant programs that help the Nation before, during and after disasters to make the country more resilient. GPD administers and manages FEMA grants to ensure critical and measurable results for customers and stakeholders, while also ensuring transparency in the grant process; consolidates the grant business operations, systems, training, policy and oversight of all FEMA grants; establishes and promotes consistent outreach and communication with state, local, tribal and territorial (SLTTs) stakeholders; and offers information about FEMA's preparedness grants funding provided to SLTT governments in the form of non-disaster grants.

<sup>11</sup> The non-disaster preparedness grant programs to which FEMA's determination applies are as follows: (1) Assistance to Firefighters Grant Program; (2) Fire Prevention and Safety Grant Program; (3) Staffing for Adequate Fire and Emergency Response Grant Program; (4) Nonprofit Security Grant Program; (5) Tribal Homeland Security Grant Program; (6) Emergency Management Performance Grant Program; (7) Operation Stonegarden; (8) State Homeland Security Program; (9) Urban Area Security Initiative; (10) Intercity Bus Security Grant Program; (11) Intercity Passenger Rail Program; (12) Port Security Grant Program; and (13) Transit Security Grant Program.

(1) Temporary Structures

- a. Installation of temporary removable barriers

(2) Recreation and Landscaping

- a. Repairs, replacement and minor upgrades to security equipment at recreational facilities.
- b. Repair, in-kind replacement, and minor upgrades to existing landscaping elements (e.g., bollards, planters, lighting elements, signs) that do not require additional ground disturbance.

(3) Buildings – Interior

- a. Building contents, including furniture, movable partitions, computers, cabinetry, supplies and equipment, and any other moveable items.
- b. Changes to interior structural elements (e.g., floors, walls, ceilings).
- c. Installation, repair, or replacement of equipment including electronic equipment, electronic whiteboards, televisions and wall monitors, radios, self-contained breathing apparatus, gear washers and dryers.
- d. Installation, repair, or replacement of building communication and surveillance security systems, such as cameras, closed-circuit television, alarm systems, and public address systems and warning sirens.
- e. Installation, repair, or replacement of building access security devices, such as card readers, enhanced locks, and security scanners (e.g., metal detectors), motion sensors, panic buttons, and access control equipment.
- f. Installation, repair or replacement of interior fire detection, fire suppression or security alarm systems.
- g. Installation, repair, upgrading or replacement, of interior utility systems, including mechanical (e.g., heating, ventilation, air conditioning),

electrical, and plumbing systems, ventilation units, air handler units including the associated ductwork and electric conduits.

(4) Windows and Doors

- a. Repair or replacement of windows, windowpanes, window frames, shutters, storm shutters, doors, and door frames, and associated hardware, or installation of window blast protection film or security bars.
- b. Installation, repair, or replacement of doors, door frames, locks or access control equipment.

(5) Exterior Security Features

- a. Installation, repair, or replacement of exterior lighting systems, cameras, or early warning systems.
- b. Repair or replacement of above-ground bollards or tire puncture treadles that do not require ground disturbance.

(6) Transportation, Utilities, and Communication Systems

- a. Installation, repair, or replacement of license plate readers, emergency warning sirens, or emergency notification signs.
- b. Repair, replacement, minor upgrading, small scale realignment and elevation of utilities and associated features and structures.
- c. Repair or minor upgrade of water towers.
- d. Collocation of antennas, communication or security equipment on existing buildings, structures, poles or communication towers.
- e. Enhancement or repair of existing communication towers and antenna supports.

This class review does not apply to actions located in regulatory floodways or coastal high hazard areas, including V/VE Zones; construction of new buildings, structures,

infrastructure or facilities; or any activity that does not clearly fall within the categories of activities listed above.

### **Compliance with Step 1 of the 8-Step Process**

Step 1 of the 8-Step Process requires FEMA to determine whether the proposed action is located in the 100-year floodplain (500-year floodplain for critical actions), and whether it has the potential to affect or be affected by the floodplain. For the purpose of this determination, FEMA assumed that all of the activities listed above might be located in the 100-year floodplain (or the 500-year floodplain for critical actions). FEMA also noted that most sites would be located in a NFIP participating community and therefore locatable on a Flood Insurance Rate Map (FIRM). The activities discussed herein are generally actions that do not constitute new construction or substantial improvement. Therefore, flood hazard area of consideration is the 1-percent-annual-chance area.

### **Compliance with Step 2 of the 8-Step Process**

Step 2 of the 8-step process requires FEMA to notify the public at the earliest possible time of the intent to carry out an action in a floodplain or wetland, and involve the affected and interested public in the decision-making process.<sup>12</sup>

FEMA is providing cumulative notice of approval for project categories specified here. A cumulative notice addresses several actions in one notice or series of notices.<sup>13</sup> FEMA may base its determination of appropriate notice of actions within the floodplain, including whether to issue a cumulative notice, on several factors, including but not limited to: (i) scale of the action; (ii) potential for controversy; (iii) degree of public need; (iv) number of affected agencies and individuals; and (v) its anticipated potential impact.<sup>14</sup> A cumulative notice addresses several actions in one notice or series of notices.

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<sup>12</sup> 44 CFR 9.6(b).

<sup>13</sup> 44 CFR 9.8(c)(7).

<sup>14</sup> 44 CFR 9.8(c)(3).

Here, each category of action covered by this determination is small-scale with little or no potential to affect the floodplain or be affected by floods; no similar actions in the past have been considered controversial by any community, organization or individual, nor is it anticipated that future actions of this kind will be controversial; each action serves an important community need to bolster the preparedness and security of existing facilities; each action affects a limited number of agencies or individuals on a facility-wide and local basis; and, as described further below, the anticipated impact to the floodplain is very low. FEMA will continue to carry out individual public notices for actions that do not meet these factors. At this time, upon consideration of the factors identified above, FEMA provides cumulative notice for the aforementioned small-scale projects pursuant to 44 CFR 9.8(c)(3).

For those projects deemed large scale, impacting a large number of agencies or individuals, and those projects whose anticipated impacts are beyond the scale of projects listed here, FEMA will continue to carry out individual public notice.

### **Compliance with Steps 3-6 of the 8-Step Process**

For the above-listed activities funded under the thirteen referenced grant programs, FEMA completed Steps 3 - 6 of the 8-step process by cumulatively considering their direct and indirect adverse impacts to floodplains associated with the occupancy and modification of floodplains, the potential to promote floodplain development directly or indirectly, and whether there could be any practicable alternative locations or actions. The actions covered by this notice do not involve new construction or substantial improvements to existing structures in the floodplain. Rather, these actions consist of minor alterations to existing facilities and are primarily comprised of the installation of new security equipment in or on existing buildings or structures, replacement of existing security equipment, or repair of existing buildings or structures. The potential for additional effects on the floodplain, and the potential for additional effects from a flood, are negligible given that these small-scale material changes would make up a small percentage of new materials in relation to the existing materials of the existing facility.

The actions are additionally minimized because they do not result in ground disturbance or make material changes to the floodplain that would affect or be affected by flood waters.

Additionally, these actions shall be conditioned to be in accordance with local floodplain ordinances and applicable codes and standards which may include minimization measures. The actions would require only short-term construction activity, minimizing the potential impacts of additional construction traffic or discharge of pollutants from building activities. The actions will not have adverse effects that can lead to the degradation and loss of natural functions and habitat because they do not include clearing vegetation, placing fill, covering floodplains with impervious surfaces, rerouting stormwater, increasing pollution sources, or channelizing rivers, or similar harmful actions. Finally, these actions will not have direct or indirect detrimental effects on the quantity and quality of floodplain habitats used by fish and other wildlife and will not reduce habitat complexity or prey availability, modify hydrology, reduce bank stability, or increase erosion, pollution, water temperature or the risk of downstream wildlife displacement. This determination is in keeping with FEMA's treatment of these actions in other areas of the EHP process; FEMA has determined that each of these small-scale actions is not significant enough to require preparation of an environmental assessment because each of them meets a categorical exclusion under Department of Homeland Security's Instruction Manual 023-01-001-01, Revision 01, Implementation of the National Environmental Policy Act (NEPA).

The majority of the covered actions are small enhancements to existing facilities that do not materially extend the life of the facility to which they are associated or promote future development of the floodplain. Because these actions involve repairs to existing facilities already located in the floodplain, there are no practicable alternatives outside of the floodplain.

The facilities enhanced by these smaller projects are located within the floodplain. Given that the covered actions occur when an existing facility is enhanced by smaller fixtures, FEMA determined there is a very low risk of adverse effects from these actions. That determination and completing this cumulative initial notice will provide time and cost savings.

### **Compliance with Step 7 of the 8-Step Process**

Step 7 of the 8-Step Process requires FEMA to prepare and provide the public with a finding and public explanation of any final decision that the floodplain is the only practicable alternative for the identified actions. FEMA will publish a final public notice for the described actions after comments from the public are received and considered. Other actions and those involving facilities that do not meet the listed criteria are required to undergo the complete Eight-Step process, including project-specific public notices.

### **Compliance with Step 8 of the 8-Step Process**

Step 8 of the 8-Step Process requires FEMA to review the implementation and post-implementation phases of the proposed action to ensure that the minimization requirements are fully implemented. FEMA will integrate all implementation and oversight responsibility into existing GPD processes for project grant review, award, award administration and closeout.

**Deanne Criswell,**

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