

**FEDERAL EMERGENCY
MANAGEMENT AGENCY****44 CFR Parts 65, 70, and 72**

RIN 3067-AC53

**Identification and Mapping of Special
Flood Hazard Areas, Procedures for
Map Correction, and Procedures and
Fees for Processing Map Changes**AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Interim final rule.

SUMMARY: This interim final rule will revise the National Flood Insurance Program (NFIP) regulations concerning the identification and mapping of Special Flood Hazard Areas (SFHAs) and revision of NFIP maps by revising the fee requirements and schedule for processing certain changes to NFIP maps. Under this interim final rule, the fees will be adjusted periodically, but no more than once annually, to provide for changes in the prevailing private-sector labor rate on which the fees are predicated. Revised fees will be published in the Federal Register.

DATES: This interim final rule is effective August 30, 1996. We invite your comments on this interim final rule. Please submit comments on or before October 1, 1996.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, or by facsimile at (202) 646-4536 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472; (202) 646-2756 or by facsimile at (202) 646-4596 (not toll-free calls).

SUPPLEMENTARY INFORMATION: This interim final rule will revise the National Flood Insurance Program (NFIP) regulations concerning the identification and mapping of Special Flood Hazard Areas (SFHAs) and revision of NFIP maps by revising the fee requirements and schedule for processing certain changes to NFIP maps. The current fee requirements and schedule were established under a final rule published in the Federal Register on June 30, 1992, 57 FR 29036.

This action will reduce expenses to the NFIP and will contribute to the NFIP's self-support by: (1) Establishing flat user fees for most requests for Conditional Letters of Map Amendment (CLOMAs), Letters of Map Revision

Based on Fill (LOMR-Fs), Conditional Letters of Map Revision Based on Fill (CLOMR-Fs), Letters of Map Revision (LOMRs), Conditional Letters of Map Revision (CLOMRs), and Physical Map Revisions (PMRs); (2) reducing the number of user fee categories; (3) requiring payment of user fees in full before beginning work on a request; (4) changing the initial fee and hourly rate for LOMR, CLOMR, and PMR requests based on structural measures on alluvial fans; (5) limiting fee exemptions for requests involving LOMAs and requests to correct mapping or analysis errors; and (6) replacing the mechanism for recovering the cartographic production costs related to incorporating map changes made by letter in Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs).

This interim final rule supersedes the fee schedules that were established on June 30, 1992. It also expands the payment method to include credit card payments.

Under this interim final rule, the fees will be adjusted periodically, but no more than once annually, to provide for changes in the prevailing private-sector labor rate on which the fees are predicated. Revised fees will be published as a notice in the Federal Register.

These amendments to the NFIP criteria for identification and mapping of SFHAs are a result of the continuing reappraisal of the NFIP for the purposes of achieving greater administrative and fiscal effectiveness and encouraging sound floodplain management so that reductions in the loss of life and property and in disaster-related expenditures can be realized.

Establishment of Flat User Fees

The existing fee collection process is complex and its administration requires time-intensive efforts on the part of FEMA. It also increases the time required to provide requesters with the Letter of Map Change (LOMC) product or PMR they require. The current system requires requesters to submit an initial fee that is not intended to cover the full review and processing costs or the cartographic production costs. Requesters subsequently receive invoices for the balance. The current system is further complicated by the pre-authorized spending limits placed on each product. When FEMA determines that these limits will be exceeded, written authorization must be obtained before proceeding with their review. Processing the request is delayed until the written authorization is received.

Under this interim final rule, FEMA will charge a single flat user fee for most LOMC and PMR requests, thereby reducing the turnaround time for preparing and issuing determination letters and reducing FEMA costs of administering the fee-charge system. FEMA could recover more of the actual costs than are recovered by the current system and redistribute the overall cost of operations.

Requirement for Full Up-Front Payment

Under this interim final rule, the requester will be required to submit the full fee payment before any work is begun on most map change requests. This will minimize the need for follow-up invoicing and ensure FEMA collects appropriate fees for services rendered.

Consolidation of Product Categories

Under this interim final rule, LOMC services and PMRs with similar review and processing requirements will be consolidated into the same fee category. As a result, the number of fee categories is reduced from 19 to 10.

Limitation of Fee Exemptions

Under current standards, requesters are exempted from paying user fees when they submit requests for changes to (1) remove properties or structures from the SFHA shown on the FIRM that were inadvertently included in the SFHA because of map scale limitations. This is handled by the LOMA process detailed in part 70 of the NFIP regulations; (2) reflect more detailed information on flooding sources, floodways, or topographic data; (3) correct mapping errors or errors in the effective Flood Insurance Study analysis; or (4) reflect projects that are for public benefit and are primarily intended for flood loss reduction to insurable structures in identified flood hazard areas that were in existence prior to the commencement of the projects. Such exemptions preclude FEMA from recovering fees for a substantial volume of work.

Under this interim final rule, exemptions are maintained only for requests for LOMAs and requests to correct mapping or analysis errors.

Maintenance of Initial Fee for Requests Based on Structural Measures on Alluvial Fans

Under this interim final rule, the initial fee for LOMC requests based on structural measures on alluvial fans will be maintained because these requests are rare, the FEMA engineering review for these requests is usually very complex, and FEMA's costs for processing these requests can fluctuate

significantly. Based on a review of actual processing costs for Fiscal Year 1995, \$5,000 will be established as the initial fee for such requests, with the remaining costs to be recovered before the LOMC is issued, consistent with current fee-reimbursement practices. Under this interim final rule, the hourly rate used to calculate the total fees that must be reimbursed is increased to \$50.

National Environmental Policy Act

This interim final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this interim final rule does not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 610 *et seq.*, because it is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on small entities. A regulatory flexibility analysis has not been prepared.

Executive Order 12612, Federalism

This interim final rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This interim final rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778, Civil Justice Reform.

Executive Order 12866, Regulatory Planning and Review

Promulgation of this interim final rule is required by statute, 42 U.S.C. 4014(f), which also specifies the regulatory approach taken in the interim final rule. To the extent possible under the statutory requirements of 42 U.S.C. 4014(f), this interim final rule adheres to the principles of regulation as set forth in Executive Order 12866, Regulatory Planning and Review.

(Catalog of Federal Domestic Assistance No. 83.100, Flood Insurance)

List of Subjects in 44 CFR Parts 65, 70, and 72

Administrative practice and procedure, Flood insurance, Floodplains, and Reporting and recordkeeping requirements.

Accordingly, 44 CFR Parts 65, 70, and 72 are amended as follows:

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL FLOOD HAZARD AREAS

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 65.4(c) is revised to read as follows:

§ 65.4 Right to submit new technical data.

* * * * *

(c) Requests for changes to effective Flood Insurance Rate Maps and Flood Boundary and Floodway Maps are subject to the cost recovery procedures described in part 72 of this subchapter. As indicated in part 72, revisions requested to correct mapping errors or errors in the Flood Insurance Study analysis are not subject to cost-recovery procedures.

3. Section 65.5(d) is revised to read as follows:

§ 65.5 Revision to special hazard area boundaries with no change to base flood elevation determinations.

* * * * *

(d) *Submission procedures.* All requests shall be submitted to the FEMA Regional Office servicing the community's geographic area or to the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with part 72 of this subchapter.

4. Section 65.6(g) is revised to read as follows:

§ 65.6 Revision of base flood elevation determinations.

* * * * *

(g) *Submission procedures.* All requests shall be submitted to the FEMA Regional Office servicing the community's geographic area or the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with part 72 of this subchapter.

5. Section 65.8 is revised to read as follows:

§ 65.8 Review of proposed projects.

A community, or an individual through the community, may request FEMA's comments on whether a proposed project will justify a map revision, if built as proposed. FEMA's comments will be issued in the form of

a letter, termed a Conditional Letter of Map Revision, in accordance with part 72 of this subchapter. The data required to support such requests are the same as those required for final revisions in accordance with §§ 65.5, 65.6, and 65.7, except as-built certification is not required. All such requests shall be submitted to the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with part 72 of this subchapter.

6. Section 65.9(h) is added to read as follows:

§ 65.9 Review and response by the Administrator.

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(h) The required payment, in accordance with part 72 of this subchapter, has not been submitted, and no review will be conducted and no determination will be issued until payment is received.

PART 70—PROCEDURE FOR MAP CORRECTION

7. The authority citation for part 70 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

8. Section 70.9 is revised to read as follows:

§ 70.9 Review of proposed projects.

An individual who proposes to build one or more structures on a portion of property that may be inadvertently included in a Special Flood Hazard Area (SFHA) may request FEMA's comments on whether the proposed structure(s) will be in the SFHA if built as proposed. FEMA's comments will be issued in the form of a letter, termed a Conditional Letter of Map Amendment (CLMA). The data required to support such requests are the same as those required for final Letters of Map Amendment in accordance with § 70.3, except as-built certification is not required and the requests shall be accompanied by the appropriate payment, in accordance with part 72 of this subchapter. All such requests for CLOMAs shall be submitted to the FEMA Regional Office servicing the community's geographic area or the FEMA Headquarters Office in Washington, DC.

PART 72—PROCEDURES AND FEES FOR PROCESSING MAP CHANGES

9. The authority citation for part 72 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

10. Section 72.1 is revised to read as follows:

§ 72.1 Purpose of part.

The purpose of this part is to provide administrative and cost-recovery procedures for the engineering review and administrative processing associated with FEMA's response to requests for Conditional Letters of Map Amendment (CLOMAs), Conditional Letters of Map Revision (CLOMRs), Conditional Letters of Map Revision Based on Fill (CLOMR-Fs), Letters of Map Revision Based on Fill (LOMR-Fs), Letters of Map Revision (LOMRs), and Physical Map Revisions (PMRs). Such requests are based on proposed or actual manmade alterations within the floodplain, such as the placement of fill; modification of a channel; construction or modification of a bridge, culvert, levee, or similar measure; or construction of single or multiple residential or commercial structures on single or multiple lots.

11. Section 72.2 is revised to read as follows:

§ 72.2 Definitions.

Except as otherwise provided in this part, the definitions set forth in Part 59 of this subchapter are applicable to this part. For the purpose of this part, the products are defined as follows:

CLOMA. A CLOMA is FEMA's comment on a proposed structure or group of structures that upon construction, will be located on existing natural ground above the base (1-percent annual chance) flood elevation on a portion of a legally defined parcel of land that is partially inundated by the base flood.

CLOMR. A CLOMR is FEMA's comment on a proposed project that upon construction will affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing effective base flood elevations, the Special Flood Hazard Area (SFHA), or the regulatory floodway.

CLOMR-F. A CLOMR-F is FEMA's comment on a proposed project that upon construction will result in a modification of the SFHA through the placement of fill outside the regulatory floodway.

LOMR. A LOMR is FEMA's modification to an effective Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM), or both, based on the implementation of

physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the SFHA. The LOMR officially revises the FIRM or FBFM, and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.

LOMR-F. A LOMR-F is FEMA's modification of the SFHA shown on the FIRM based on the placement of fill outside the regulatory floodway.

Physical Map Revision. A Physical Map Revision (PMR) is FEMA's revision and republication of an effective FIRM, FBFM, or FIS report based on physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the SFHA.

12. Section 72.3 is revised to read as follows:

§ 72.3 Fee schedule.

(a) For requests for CLOMRs, LOMRs, and Physical Map Revisions based on structural measures on alluvial fans, an initial fee subject to the provisions of § 72.4, shall be paid to FEMA before FEMA begins review of the request. The initial fee represents the minimum cost for reviewing these requests and is based on the prevailing private-sector labor rate. A revision to this initial fee, if necessary, will be published as a notice in the Federal Register.

(b) For requests for CLOMRs, LOMRs, and Physical Map Revisions based on structural measures on alluvial fans, the total fee is to be calculated based on the total hours expended by FEMA in reviewing and processing the request multiplied by an hourly rate based on the prevailing private-sector labor rate. The hourly rate is published as a notice in the Federal Register. A revision to the hourly rate, if necessary, will be published as a notice in the Federal Register.

(c) For conditional and final map revision requests for the following categories, flat user fees, subject to the provisions of § 72.4, shall be paid to FEMA before FEMA begins review of the request.

(1) Requests for CLOMAs, CLOMR-Fs, and LOMR-Fs for single structures or single lots;

(2) Requests for CLOMAs for multiple structures or multiple lots;

(3) Requests for CLOMR-Fs and LOMR-Fs for multiple structures or multiple lots;

(4) Requests for LOMRs and Physical Map Revisions based on projects involving bridges, culverts, or channels, or combinations thereof;

(5) Requests for LOMRs and Physical Map Revisions based on projects involving levees, berms, or other structural measures;

(6) Requests for LOMRs and Physical Map Revisions based on as-built information for projects for which CLOMRs were issued previously by FEMA;

(7) Requests for LOMRs and Physical Map Revisions based solely on more detailed data;

(8) Requests for CLOMRs based on projects involving new hydrologic information, bridges, culverts, or channels, or combinations thereof; and

(9) Requests for CLOMRs based on projects involving levees, berms, or other structural measures.

(d) The flat user fees for conditional and final map amendments and map revisions are based on the actual costs for reviewing and processing the requests. The fees for requests for LOMR-Fs, LOMRs, and PMRs also shall include FEMA's costs for physically revising affected FIRM and FBFM panels to reflect map changes at a later date.

(e) In addition to the flat user fees for Physical Map Revisions, payment of a fee for FEMA's cartographic production costs, based on actual per-panel costs, shall be required.

(f) Revisions to the fees, if necessary, will be published as a notice in the Federal Register.

13. Section 72.4 is revised to read as follows:

§ 72.4 Submittal/payment procedures and FEMA response.

(a) The initial fee shall be submitted with a request for FEMA review and processing of CLOMRs, LOMRs, and Physical Map Revisions based on structural measures on alluvial fans; the appropriate flat user fee shall be submitted with all other requests for FEMA review and processing.

(b) FEMA must receive initial and flat user fees before it will begin any review. The fee is non-refundable when FEMA begins its review.

(c) Following completion of FEMA's review for any CLOMR, LOMR, or Physical Map Revision based on structural measures on alluvial fans, FEMA shall invoice the requester at the established hourly rate for any actual costs exceeding the initial fee incurred for review and processing. FEMA will

not issue a determination letter or revised map panels until the invoice amount is received.

(d) For all map revision requests, FEMA will bear the cost of reprinting and distributing the revised FIRM or FBFM panels, or combination.

(e) The entity that applies to FEMA through the local community for review is responsible for the cost of the review. The local community incurs no financial obligation under the reimbursement procedures set forth in this part as a result of transmitting the application by another party to FEMA.

(f) Requesters shall submit payments by check or money order or by credit card. Checks or money orders, in U.S. funds, shall be made payable to the National Flood Insurance Program.

(g) For CLOMA, CLOMR-F, LOMA, and LOMR-F requests, FEMA shall:

(1) Notify the requester and the community within 30 days as to the adequacy of the submittal, and

(2) Provide to the requester and the community, within 60 days of receipt of adequate information and fee, a determination letter or other written comment in response to the request.

(h) For CLOMR, LOMR, and PMR requests, FEMA shall:

(1) Notify the requester and the community within 60 days as to the adequacy of the submittal; and

(2) Provide to the requester and the community, within 90 days of receipt of adequate information and fee, a CLOMR, a LOMR, other written comment in response to the request, or preliminary copies of the revised FIRM panels, FBFM panels, or affected portions of the FIS report to the

community and the requester for review and comment.

14. In § 72.5, paragraphs (a) and (b) are revised to read as follows:

§ 72.5 Exemptions.

(a) Requests for map changes based on mapping or analysis errors or the effects of natural changes within Special Flood Hazard Areas shall be exempt from fees.

(b) Requests for LOMAs shall be exempt from fees.

* * * * *

15. Section 72.6 is revised to read as follows:

§ 72.6 Unfavorable response.

(a) A request for a CLOMA, CLOMR, or CLOMR-F may be denied or the determination may contain specific comments, concerns, or conditions regarding a proposed project or design and its impacts on flood hazards in a community. A requester is not entitled to any refund of the fees paid if the determination contains such comments, concerns, or conditions, or if the request is denied. A requester is not entitled to any refund of the fees paid if the requester is unable to provide the appropriate scientific or technical documentation or to obtain required authorizations, permits, financing, etc., for which the CLOMA, CLOMR, or CLOMR-F was sought.

(b) A request for a LOMR, LOMR-F, or Physical Map Revision may be denied or the revisions to the FIRM, FBFM, or both, may not be in the manner or to the extent desired by the requester. A requester is not entitled to any refund of the fees paid if the revision request is denied or if the LOMR, LOMR-F, or Physical Map

Revision action does not revise the map specifically as requested.

16. Section 72.7 is revised to read as follows:

§ 72.7 Resubmittals.

(a) Any resubmittal of a CLOMA, CLOMR, CLOMR-F, LOMR, LOMR-F, or Physical Map Revision request more than 90 days after FEMA notification that the request has been denied or after the review has been terminated because insufficient information was provided by the requester will be treated as an original submission and subject to all submittal/payment procedures described in § 72.4. The procedure in § 72.4 also applies to any resubmitted request (regardless of when it is submitted) if the project on which the request is based has been altered significantly in design or scope other than as necessary to respond to comments, concerns, or other findings made by FEMA regarding the original submission.

(b) When a LOMR, LOMR-F, or Physical Map Revision request is made following a CLOMR or CLOMR-F issued previously by FEMA, the procedures in § 72.4 and the appropriate fee, as referenced in § 72.3(c), apply when the as-built conditions differ from the proposed conditions on which the issuance of the CLOMR or CLOMR-F was based.

Dated: August 23, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

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