

OHIO—OZONE—Continued

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
*	*	*	*	*

¹ This date is November 15, 1990, unless otherwise noted.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067-AC29

National Flood Insurance Program; Insurance Coverage and Rates

AGENCY: Federal Insurance
Administration, FEMA.

ACTION: Final rule.

SUMMARY: This final rule amends the National Flood Insurance Program (NFIP) regulations to increase the waiting period before which flood insurance coverage becomes effective under the Standard Flood Insurance Policy and to increase the limits of coverage available under the NFIP. This final rule is necessary to comply with the waiting period requirement and maximum flood insurance coverage amounts established by the National Flood Insurance Reform Act of 1994. The intent of this final rule is to establish a 30-day waiting period, with certain exceptions, before flood insurance coverage becomes effective under the Standard Flood Insurance Policy and to provide higher limits of flood insurance coverage to current and new policyholders.

EFFECTIVE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646-3422.

SUPPLEMENTARY INFORMATION: As part of the implementation of the National Flood Insurance Reform Act of 1994 (the Reform Act), on November 15, 1994, the Federal Emergency Management Agency (FEMA) published in the **Federal Register** (Vol. 59, page 58808) a proposed rule to increase the waiting period from five days to 30 days before flood insurance coverage becomes effective under the Standard Flood Insurance Policy and to increase the limits of coverage available under the National Flood Insurance Program.

The Reform Act provided for two exceptions to the 30-day waiting period, i.e., (1) when the initial purchase of flood insurance is in connection with the making, increasing, extension, or renewal of a loan and (2) when the initial purchase of flood insurance occurs during the one-year period following notice of the issuance of a revised flood map for a community.

A 45-day period was provided for review and comment on the proposed changes. FEMA received comments on the proposed changes from five respondents. The tally of comments included representatives from three private insurance companies participating in the NFIP Write Your Own (WYO) Program, one bank, and a national trade association representing savings and community financial institutions.

All five respondents commented on the waiting period.

One WYO company respondent commented that imposing a longer waiting period before coverage becomes effective "will have a potential negative impact on efforts to market flood insurance" and that imposing a longer waiting period will also result "in an increase in disaster assistance payments since, at the time of a flood, people not yet flooded will be less inclined to buy flood insurance." Whatever the validity of these points may be, the longer waiting period must be implemented since, as the respondent pointed out, the Reform Act mandates such action.

Another WYO company respondent noted that the waiting period does not apply to the initial purchase of flood insurance in connection with the making, increasing, extension, or renewal of a loan and inquired whether this exception extends to transactions related to refinancing and home equity loans. The exception extends to such transactions so long as the purchase of flood insurance is the *initial* purchase of such insurance. The regulations currently provide for no waiting period in the case of a title transfer, so long as the policy is applied for and the premium is paid at or prior to the title transfer. It is important to point out that the Reform Act does not provide for this exception and, therefore, the current provision related to title transfers will

not apply on and after March 1, 1995. This provision has, in essence, been replaced by the loan closing exception which, in most cases, has the same result.

The national trade association respondent commented on the exception to the waiting period in connection with the purchase of new flood insurance coverage for one year after notice of a remapping or redesignation of a flood zone. That respondent noted that the "provision presupposes that the servicer of the loan has an obligation to require purchase by a borrower within a specific period of time following the publication of a notice of remapping or redesignation" and further commented that "it is not clear under either the statute or the proposal just what the nature of the servicer's obligation is as it relates to this form of purchase obligation. The Conference Committee Report refers to 'tripwires' and suggests that the obligation to require purchase by the borrower may only arise when a lender is 'making, increasing, extending or renewing' a loan."

Based on its interpretation, this respondent commented that "it would be inappropriate to include the one-year limitation * * * because the purchase obligation could arise at any time, not just within one year of publication of map amendments." This respondent further commented that the specific one-year limitation is not included in the language of the statute and suggested that, "Until the issue of timing of the purchase requirement can be resolved", FEMA should eliminate the one-year limitation and replace the opening phrase with the following language: "At any time following the issuance of a revised".

FEMA is not clear about the respondent's concern and points out that the specific one-year period related to map revisions is indeed included in the statute (sec. 579 of the Reform Act) which revises section 1306 of the National Flood Insurance Act of 1968 to add subsection (c). The specific reference to the one-year period is in section 1306(c)(2)(B).

As pointed out in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Reform Act provides that the

one-year period starts on the date of publication of the notice of the revision and requires that the notice be published not later than 30 days after the effective date of the map revision. Since agents using flood maps automatically get copies of revised maps with the effective date of the revision shown on the map but may not see the new notice that is required, FEMA is interpreting the period for this exception to be the 13-month period beginning on the effective date of the map revision. Due to a technical oversight, this 13-month interpretation was not included in the regulatory text of the proposed rule. This oversight has been corrected and the exception to the waiting period in connection with the purchase of new flood insurance coverage made pursuant to a remapping or redesignation of a flood zone is revised in this final rule to reflect the 13-month period.

A WYO company respondent made reference to the current procedure for allowing for the renewal of policies with the same policy number after the 30-day grace period but within 90 days of the policy expiration. In such an instance, current procedures require that the 5-day waiting period be calculated from the date the renewal premium payment is received. In those instances where the policy has lapsed for more than 90 days, a new application is required. This respondent has expressed concern that "using the 30-day waiting period would require a new application on any renewal payments received sixty (60) or more days after expiration, as the addition of the waiting period would extend the lapsed coverage to ninety (90) days or more."

This concern indicates a misunderstanding of one of the FEMA rules regarding policy renewal when the renewal payment is received after the 30-day grace period. The respondent mistakenly believes that the premium has to be received early enough so that the 30-day waiting period is over and the coverage is in force by the 90th day. However, in that situation, in order not to be required to submit a new application, it is sufficient that the premium be received within 90 days after expiration. If the renewal notice and premium are received on day 90, the policy bearing the former policy number may be placed in force 30 days following receipt, without a new application.

That respondent and another WYO company respondent expressed concern as to the impact the 30-day waiting period will have on policies issued through the Mortgage Portfolio Protection Program (MPPP). Both of

these respondents pointed out that, since the MPPP guidelines require a 45-day notification letter cycle prior to application for force-place flood insurance coverage, imposing the 30-day waiting period for policies issued under the MPPP will result in a minimum of 75 days before coverage could be in effect. The other WYO company respondent further commented that, in accordance with the provisions of the Reform Act, "if the lender and borrower dispute the flood zone in writing to the Director and the Director does not respond for 45 days, the collateral is still listed as being in a flood zone, and the customer does not purchase the required insurance, collateral could potentially be uninsured for an additional 45 days increasing the total to 120 days." Based on their concerns, these respondents urged that the 30-day waiting period *not* be applicable in those instances where the lender is purchasing the flood insurance coverage for the borrower, even though the cost of the policy will be passed on to the borrower.

While FEMA appreciates their concerns, the statute is quite specific concerning the exceptions to the 30-day waiting period and, since the examples cited by these respondents do not fall within those exceptions, FEMA cannot waive the 30-day waiting period for these situations. Therefore, the revisions to the waiting period are incorporated into the final rule as originally proposed, except for the change related to the 13-month period in connection with the remapping or redesignation of a flood zone as discussed above.

As pointed out in the proposed rule, however, the Reform Act requires FEMA to conduct a study to determine the appropriateness of existing requirements regarding the effective date and time of coverage under flood insurance contracts obtained through the national flood insurance program. Congress stipulated that, in conducting the study, the Director shall determine whether any delay between the time of purchase of flood insurance coverage and the time of initial effectiveness of the coverage should differ for various classes of properties or for various circumstances under which such insurance was purchased. The comments received from the respondents will be considered as FEMA conducts this study.

Two of the respondents commented on the proposal to increase the limits of coverage under the NFIP.

A WYO company inquired whether a primary single family residence that is currently insured in the maximum amount of coverage and thus qualifies

for replacement cost coverage would still be entitled to replacement cost should a loss occur between the time the increased limits of coverage take effect and the time the policy is due for renewal. The company questioned whether, in such an instance, the loss would be settled on a replacement cost or actual cash value basis. The company also inquired regarding the same scenario when the insured has a three-year policy and in the case of a condominium building which is insured under the Residential Condominium Building Association Policy. FEMA will be issuing implementing instructions which will address this issue and will be sent to this WYO company and all other WYO companies. This WYO company also inquired about the effective date should an agent submit a request to increase limits for a residential structure to the new \$250,000 maximum before March 1. In setting forth its understanding, the company correctly concluded that if the endorsement (with appropriate premium, of course) is submitted before March 1, 1995, the endorsement would become effective after five days or on March 1 (whichever is later) and that any endorsement (with appropriate premium) submitted on or after March 1, 1995, would become effective after a 30-day waiting period (unless one of the exceptions applied, of course).

In commenting on the maximum amounts of coverage to be available after March 1, 1995, the national trade association respondent urged FEMA "to work in conjunction with the bank regulatory agencies on a state and federal level to coordinate the obligations of financial institutions." This respondent pointed out that some existing federal regulations require institutions to "maintain coverage 'for the term of the loan' in an amount 'at least equal to the outstanding principal balance of the loan or the maximum coverage available with respect to the particular type of property under the Act, whichever is less.'" This respondent expressed the belief that compliance with those regulations may require that additional insurance be purchased "in those instances where insurance must be maintained in the amount of the maximum available under the flood insurance program" and thus questioned whether the current loan servicer is obligated to act immediately to increase the amount of coverage or whether a reasonable time period will be available for the purchase of additional insurance. This respondent suggested that, given the complexities of present-day loan

servicing, a significant period of time, such as 180 days following the date of availability of the increased coverage, be provided to allow lenders/servicers sufficient time to arrange or cause the borrower to obtain any required additional coverage.

This respondent pointed out that section 524 of the Reform Act "specifies the notifications required for a property in a designated flood plain 'covered by such insurance in an amount less than the amount required for the property'" and suggested that FEMA "clarify that these procedures are the same steps to be followed in the event additional insurance is required." It was suggested that the notification and standard hazard determination forms being promulgated pursuant to sections 527 and 528 of the Reform Act "include language to alert the borrower to the potential requirement to purchase additional insurance at a future date." This suggestion will be considered as the notification and standard hazard determination forms are being developed. The final authority regarding regulations relating to the obligations of financial institutions rests with the various federal entities for lending regulation. However, FEMA does have a consulting/coordinating role with those federal entities and will pass these comments along to those entities for their consideration.

National Environmental Policy Act

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

Executive Order 12898, Environmental Justice

The socioeconomic conditions relating to this final rule were reviewed and a finding was made that no disproportionately high and adverse effect on minority or low income populations result from this final rule.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of Section 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and has not been reviewed by the Office of Management and Budget. Nevertheless, this final rule adheres to the regulatory principles set forth in E.O. 12866.

Paperwork Reduction Act

This final rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This 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 final rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 61

Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 61 is amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 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 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 61.6 is revised to read as follows:

§ 61.6 Maximum amounts of coverage available.

(a) Pursuant to section 1306 of the Act, the following are the limits of coverage available under the emergency program and under the regular program.

	Regular program		
	Emergency program ¹ first layer	Second layer	Total amount available
Single Family Residential			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands	35,000	215,000	250,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands	50,000	200,000	250,000
Other Residential			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands	100,000	150,000	250,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands	150,000	100,000	250,000
Nonresidential			
Small business	100,000	400,000	500,000
Churches and other properties	100,000	400,000	500,000
Contents²			
Residential	10,000	90,000	100,000
Small business	100,000	400,000	500,000
Churches, other properties	100,000	400,000	500,000

¹ Only first layer available under emergency program.

² Per unit.

(b) In the insuring of a residential condominium building in a regular program community, the maximum limit of building coverage is \$250,000 times the number of units in the building (not to exceed the building's replacement cost).

3. Section 61.11 is amended as follows:

a. By revising paragraphs (a), (b), and (c) to read as follows:

§ 61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New Business Applications and Endorsements.

(a) During the 13-month period beginning on the effective date of a revised Flood Hazard Boundary Map or

Flood Insurance Rate Map for a community, the effective date and time of any initial flood insurance coverage shall be 12:01 a.m. (local time) on the first calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on May 1 will

become effective at 12:01 a.m. on May 2.

(b) Where the initial purchase of flood insurance is in connection with the making, increasing, extension, or renewal of a loan, the coverage with respect to the property which is the subject of the loan shall be effective as of the time of the loan closing, provided the written request for the coverage is received by the NFIP and the flood insurance policy is applied for and the presentment of payment of premium is made at or prior to the loan closing.

(c) Except as provided by paragraphs (a) and (b) of this section, the effective date and time of any new policy or added coverage or increase in the amount of coverage shall be 12:01 a.m. (local time) on the 30th calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on May 1 will become effective at 12:01 a.m. on May 31.

* * * * *

b. In paragraph (e), by removing, in the second sentence, the phrase "(P.O. Box 459, Lanham, Maryland 20706)".

c. By removing paragraphs (f) (1) and (2) and by redesignating paragraph (f)(3) as paragraph (g).

d. In newly redesignated paragraph (g), by removing the word "this" and after "(f)" add "of this section".

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

Dated: January 23, 1995.

Elaine A. McReynolds,
Administrator, Federal Insurance Administration.

[FR Doc. 95-2249 Filed 1-27-95; 8:45 am]

BILLING CODE 6718-05-P

44 CFR Part 65

[Docket No. FEMA-7123]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

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.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The

community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This 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 Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

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, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows: