

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Maps are available for inspection at City Hall, 301 Military Road, North Sioux City, South Dakota. Union County (Unincorporated Areas) (FEMA Docket No. 7310) <i>Big Sioux River:</i> At mouth of Big Sioux River *1,090 At Interstate 29 *1,094 At State Route 48 *1,143 Big Sioux River Split at Interstate 29: Approximately 1,800 feet downstream of Westshore Drive *1,108 At divergence from Big Sioux River *1,110 Maps are available for inspection at Union County Planning and Zoning Office, 209 East Main, Elk Point, South Dakota.	
WASHINGTON	
Clallam County (Unincorporated Areas) (FEMA Docket No. 7278) <i>Elwha River:</i> Approximately 3,250 feet above mouth *14 Approximately 3,800 feet above mouth *16 Approximately 5,500 feet above mouth *24 Approximately 8,000 feet above mouth *35 Maps are available for inspection at the Clallam County Planning Department, 223 East Fourth Street, Port Angeles, Washington. College Place (City), Walla Walla County (FEMA Docket No. B-7404) <i>Garrison Creek:</i> Approximately 3,300 feet upstream of Mission Road *703 Approximately 6,400 feet upstream of Mission Road *723 Maps are available for inspection at City Hall, 625 South College Avenue, College Place, Washington. Lower Elwha Indian Reservation, Clallam County (FEMA Docket No. 7278) <i>Elwha River:</i> Approximately 650 feet above mouth *7 Approximately 7,550 feet above mouth *34 Maps are available for inspection at the Tribal Center, 2851 Lower Elwha Road, Port Angeles, Washington. Washtucna (Town), Adams County (FEMA Docket No. B-7404) <i>Washtucna Coulee:</i> Approximately 2,700 feet downstream of Cooper Street +1,002 Just downstream of Canal Street +1,023 At confluence with Staley Coulee +1,023	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Approximately 800 feet upstream of the confluence with Staley +1,025 <i>Staley Coulee:</i> Just upstream of Canal Street +1,023 Approximately 800 feet upstream of North Street +1,032 Maps are available for inspection at the Washtucna Town Hall, 165 Southeast Main Street, Washtucna, Washington.	
WYOMING	
Sheridan (City), Sheridan County (FEMA Docket No. 7318) <i>Big Goose Creek:</i> Approximately 1.66 miles upstream of Works Street *3,768 Approximately 4 miles upstream of Works Street *3,800 <i>Little Goose Creek:</i> Approximately 1,250 feet downstream of Brundage Lane *3,782 Just upstream of County Road 66 *3,836 Maps are available for inspection at the City of Sheridan Planning Department, 55 East Grinnell Avenue, Sheridan, Wyoming.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")
Dated: June 18, 2001.

Robert F. Shea,
Acting Administrator, Federal Insurance Administration and Mitigation.
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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 70
RIN 3067-AD19

National Flood Insurance Program (NFIP); Clarification of Letter of Map Amendment Determinations

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Final rule.

SUMMARY: We, FEMA, are amending our procedures for issuing Letters of Map Amendment (also referred to as LOMAs) to add a possible outcome to those already described in our rules. When a property is outside a designated Special Flood Hazard Area (SFHA) as shown on the NFIP map we will issue a LOMA but will not modify the Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM).

EFFECTIVE DATE: July 26, 2001.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Federal Insurance Administration, Federal Emergency Management Agency at (202) 646-3461, or (email) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION:

Background

Congress created the NFIP in 1968 to provide federally supported flood insurance coverage, which generally had not been available through private insurance companies. The program is based on an agreement between the Federal Government and each flood-prone community that chooses to participate in the program. FEMA makes flood insurance available to property owners within a community provided that the community adopts and enforces floodplain management regulations that meet or exceed the minimum requirements of the NFIP set forth in Title 44, Chapter I, Part 60 of the NFIP Floodplain Management Regulations (44 CFR Part 60).

Mandatory Purchase of Insurance

The Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, mandates the purchase of flood insurance on structures located in identified SFHAs as a condition of Federal or federally-related financial assistance for acquisition or construction of structures in SFHAs of any community. The Acts prohibit Federal agency lenders, such as the Small Business Administration, United States Department of Agriculture's Rural Housing Service, and Government-Sponsored Enterprises for Housing (Freddie Mac and Fannie Mae) from making, increasing, guaranteeing, or purchasing a loan secured by improved real estate or mobile home(s) in an SFHA, unless flood insurance has been purchased and maintained on the property during the term of the loan. The Acts also prohibit federally-regulated lenders from making, increasing, extending, or renewing any loan secured by improved real estate located in the SFHA in a participating community unless the secured property and any personal property securing the loan is covered by flood insurance. The prohibition of financial assistance also applies to non-participating communities.

Need for Clarification of Determinations

Section 1360 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101) requires the Director of FEMA to

identify and map floodplains and to identify flood risk zones, and also makes provision for revising and updating floodplains and flood-risk zones and requiring public notification of flood map changes. The requirements for amending the FIRMs are in 44 CFR part 70, Procedure for Map Correction.

We amend or revise NFIP flood maps for a number of reasons, such as the availability of improved techniques for assessing the flood risk, changes in the physical condition of the floodplain or watershed, or as additional data become available to improve the identification of flood hazards. The criteria for determining whether to remove unimproved land or land with structures from the SFHA because ground elevations of the land or structures are above the BFE are in sections (§§) 70.3 and 70.4. If the criteria are met, we will issue a LOMA.

When requesting a LOMA, property owners must submit adequate supporting data according to the criteria established in §§ 70.3 and 70.4, such as a legal description of the property, location of the insurable structure on the property, and information regarding the lowest adjacent grade (LAG) elevation. However, if the structure in question, when plotted on the NFIP map, does not touch the mapped SFHA, we do not require the LAG elevation as part of the data that support the request.

Under § 70.4, after we review the scientific or technical information that the LOMA applicant submitted, we notify the applicant that we have compared the ground elevations of the entire legally defined parcel of land or the elevation of the lowest adjacent grade to a structure with the elevation of the base flood and that:

(a) The property is within a designated flood-risk zone and we state the basis for our determination; or

(b) The property should not be included within a designated flood-risk zone and we will amend the FHBM or the FIRM; or

(c) We need an additional 60 days to make a determination.

There is an alternative outcome that we sometimes encounter during the LOMA review process that part 70 does not describe. After plotting the property location on the NFIP map, a property or structure may fall outside the delineated SFHA. When this happens, the LOMA states that the property or structure is "out as shown" and there is no need to take action to correct the map because the map already indicates that the property or structure falls outside the SFHA.

There has been considerable confusion over the determination made

in some LOMAs that state a property or structure is "out as shown" on the effective NFIP map. Specifically, when a third party determination company has made a determination for a lender that a structure is in the SFHA and the borrower requests a LOMA from FEMA that results in a determination that the structure is already mapped outside the SFHA, lenders are requesting that the third party change its finding to agree with FEMA's. Without comparing the data used by the determination company to the data used by FEMA comparing the property and structure, a conclusion is unsure. If this conflict arises during the loan origination process, there is an established process for resolving disputes under part 65.17: "Review of Determinations." We are amending this rule to clarify the status of LOMAs that make a determination of "out as shown."

By this rule, we are adding an additional possible outcome to those described in § 70.4: The property is not within a designated SFHA as shown on the NFIP map and no modification of the Flood Hazard Boundary Map or FIRM is necessary.

Administrative Procedure Act Statement

Under the National Flood Insurance Program FEMA must identify floodprone areas throughout the United States and revise and update flood maps when sufficient technical data justify a request for map amendment or map revision (42 U.S.C. 4101). If an insurable property is located within an identified SFHA, the property owner must obtain flood insurance under specified conditions (42 U.S.C. 4012a). It follows that if an insurable property is located outside an SFHA the mandatory flood insurance purchase requirements of the Flood Disaster Protection Act of 1973 do not apply (although the owner may purchase flood insurance voluntarily).

This rule is an "interpretative" rule under the Administrative Procedure Act (5 U.S.C. 553(b)(A)). The rule interprets the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 to clarify that when we find sufficient technical data and determine that a property or structure is "out as shown" on an existing FHBM or FIRM, that is, when the property is located outside an SFHA as shown on the map, we will issue a Letter of Map Amendment but will not modify the FHBM or FIRM.

Accordingly, we have determined that this rule is not subject to the requirements of 5 U.S.C. 553(b), and we are making the rule effective upon publication under the authority of 5

U.S.C. 553(d)(2). The Office of Management and Budget, Office of Information and Regulatory Affairs, has reviewed this rule.

National Environmental Policy Act (NEPA)

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for "major federal actions significantly affecting the quality of the human environment." If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, as a result of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

Categorical Exclusions

Agencies can categorically identify actions (for example, repair of a building damaged by a disaster) that do not normally have a significant impact on the environment. The purpose of this interpretive rule is to clarify and state expressly in our rules that when we determine that a property or structure is "out as shown" on an existing FHBM or FIRM, we will issue a Letter of Map Amendment but will not modify the FHBM or FIRM.

Accordingly, we have determined that this rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(iv).

Paperwork Reduction Act

This rule requires the collection of information. Under the Paperwork Reduction Act (Act) we must consider the impact of paperwork and other information collection burdens imposed on the public. The Act mandates specific reductions in the amount of paperwork requirements imposed by agencies. It requires specific approval by the Office of Management and Budget (OMB) of any new requirements for collection of information imposed on ten or more persons by an agency; without such approval, the agency lacks the authority to enforce any such requirement. The Act also requires us to inform respondents that a response is not required unless the collection of information displays a valid OMB control number.

OMB has previously approved the following information collection

requirements covered by this final rule under the provisions of the Paperwork Reduction Act, as amended:

OMB Control Number	Title
3067-0147, Expires 8/31/2001	Report to Submit Technical or Scientific Data to Correct Mapping Deficiencies Unrelated to Community-Wide Elevation Determinations (Amendments & Revisions to National Flood Insurance Program Map)
3067-0148, Expires 7/31/2001	Consultation with Local Officials to Assure Compliance with Sections 110 and 206 of the Flood Disaster Protection Act of 1973 (Revisions to National Flood Insurance Program Maps) 81-89/81/89A 81-89B/81-89C 81/89D/81/89E 81-89F/81-89G 81-89H/81-89I 81-89J/81-89K
3067-0257, Expires 7/31/2001	Report to Submit Technical Data to Correct Mapping Deficiencies Unrelated to Community-Wide Elevation Determinations for a Single Residential Lot or Structure. FEMA-FORM-81-92.

We will be applying to the Office of Management and Budget to extend our authorizations under Control Number 3067-0147, 3067-0148, and 3067-0257. Any person who is to respond to this collection of information is not required to respond unless the collection of information displays a currently valid OMB control number.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule is an "interpretative" rule under the Administrative Procedure Act (5 U.S.C. 553(b)(A)). The rule interprets the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 to clarify that when we find sufficient technical data and determine that a property or structure is "out as shown" on an existing FHBM or FIRM, that is, when the property is located outside an SFHA as shown on the map, we will issue a Letter of Map Amendment and that does not modify the FHBM or FIRM. We know of no conditions that would qualify the rule as a "significant regulatory action" within the definition of section 3(f) of the Executive Order.

Accordingly, this rule is not a major rule as defined in 5 U.S.C. 804(2). To the extent possible this rule adheres to the principles of regulation as set forth in Executive Order 12866. The Office of Management and Budget (OMB) has not reviewed this rule under Executive Order 12866.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this final rule under Executive Order 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. The rule interprets the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 to clarify that when we find sufficient technical data and determine that a property or structure is "out as shown" on an existing FHBM or FIRM, that is, when the property is located outside an SFHA as shown on the map, we will issue a Letter of Map Amendment and that does not modify the FHBM or FIRM.

We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion. Accordingly, the provisions of Executive Order 13132, Federalism, do not apply to this rule. The Office of Management and Budget has reviewed this rule under the provisions of Executive Order 13132.

This rule involves no policies that have federalism implications under Executive Order 13132, Federalism, dated .

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104-121. The rule is not a "major rule" within the meaning of that Act. It is an interpretive rule in support of normal day-to-day mapping activities related to Letters of Map Amendment under the National Flood Insurance Program.

The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is subject to the information collection requirements of the Paperwork Reduction Act and OMB has assigned Control Nos. 3067-0147, 3067-0148, and 3067-0257. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, and any enforceable duties that we impose are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 70

Administrative practice and procedure, Reporting and recordkeeping requirements.

Accordingly, we amend 44 CFR 70 as follows:

PART 70—PROCEDURE FOR MAP CORRECTION

1. The authority citation for Part 70 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. We revise § 70.4 to read as follows:

§ 70.4 Review by the Director.

The Director, after reviewing the scientific or technical information submitted under the provisions of § 70.3, shall notify the applicant in writing of his/her determination within 60 days after we receive the applicant's scientific or technical information that we have compared either the ground elevations of an entire legally defined parcel of land or the elevation of the lowest adjacent grade to a structure with the elevation of the base flood and that:

(a) The property is within a designated A, A0, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, V0, V1-30, VE, or V Zone, and will state the basis of such determination; or

(b) The property should not be within a designated A, A0, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, V0, V1-30, VE, or V Zone and that we will modify the FHBM or FIRM accordingly; or

(c) The property is not within a designated A, A0, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, V0, V1-30, VE, or V Zone as shown on the FHBM or FIRM and no modification of the FHBM or FIRM is necessary; or

(d) We need an additional 60 days to make a determination.

* * * * *

Robert F. Shea,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 01-15807 Filed 6-25-01; 8:45 am]

BILLING CODE 6718-04-P

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

44 CFR Part 206

RIN 3067-AD08

Disaster Assistance; Debris Removal

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (FEMA) are adding to the conditions under which we may determine that debris removal is in the public interest following a declared disaster. We may provide funding for the removal of debris and wreckage from publicly and privately owned lands and waters when communities convert property acquired through a FEMA program for hazard mitigation purposes to uses compatible with open space, recreational, or wetlands management practices.

EFFECTIVE DATE: This rule is effective July 26, 2001.

FOR FURTHER INFORMATION CONTACT:

Melissa M. Howard, Ph.D., Federal Emergency Management Agency, room 713, 500 C Street SW., Washington DC 20472, (202) 646-4240, or (email) *melissa.howard@fema.gov*.

SUPPLEMENTARY INFORMATION:

We consider that it is in the public interest to remove substantially damaged structures and related slabs, driveways, fencing, garages, sheds, and similar appurtenances from properties that are part of a FEMA-funded hazard mitigation buyout and relocation project. On May 16, 2000, we published a proposed rule on debris removal in the **Federal Register**, 65 FR 31129, and invited comments for 60 days ending on July 15, 2000. We received comments from three sources representing a federal agency, a State government, and a national association.

The proposed rule stated that we would consider in the public interest the removal of substantially damaged structures that a community acquired through a FEMA-funded hazard mitigation project. The removal of such structures would help to mitigate the risk to life and property by converting the property to uses that are compatible with open space, recreational and wetlands management practices. We believe that Federal assistance used in this way supports the effort to break the cycle of repetitive damage and repair; such removal is less costly to taxpayers than paying for repetitive damage and repair. Mitigation through buyout and relocation also substantially reduces the risk of future infrastructure damage and personal hardship, loss and suffering.

Comment. One commenter asked whether it is in the public interest to remove substantially damaged structures and related appurtenances during a partial buyout. In these cases, the commenter said, a FEMA-funded mitigation program may acquire one property, but not an adjacent property.

Response. We believe that debris removal from the acquired property is in the public interest because that property will not be built upon in the future. This type of removal contributes to the goal of reducing long-term vulnerability. In the case of an adjacent property, if that property is not substantially damaged, it could be removed under section 404 of the Stafford Act, but it could not be removed under section 407 since it would not be debris or wreckage.

Comment. Another commenter stated that debris and wreckage removal was just one element of demolition and

suggested that we also fund the razing of these structures.

Response. We intend to remove only those structures that may be classed as debris and wreckage. Razing the structure in such cases should not be necessary. However, if a structure and its appurtenances meet the criteria in this rule, that is, that the property is substantially damaged and acquired through a FEMA-funded hazard mitigation program, we will fund its removal and will include razing and disposal as applicable.

Comment. A related comment asked that we fund the removal of all damaged structures acquired through a FEMA-funded mitigation program, not just those that are substantially damaged. Section 407 of the Stafford Act allows for the removal of debris and wreckage.

Response. We do not consider structures to be debris and wreckage if they are not substantially damaged. If we were to fund their removal, we would have to do so under the authority of section 404 of the Stafford Act. In order to lessen the administrative burden of funding on a structure-by-structure basis in areas where some structures are substantially damaged and others are not, we will fund debris and wreckage removal on a prorated basis. For example, if 60 percent of structures are substantially damaged, we will reimburse 60 percent of the costs for removing all structures acquired through a FEMA-funded mitigation program.

Comment. A final comment raised the issue of timelines for completion of debris removal. The commenter thought that assisting in the buyout process would prevent the Public Assistance Program from reaching disaster closeout objectives. The commenter suggested that we limit funding to 12 months after the declaration.

Response. We understand the point of the commenter and agree that the use of the authority must be time-limited. Because we find a one-year deadline to be impractical, we have established a two-year deadline, which we do find reasonable. Therefore, we will allow two years from the declaration date to obligate funds and complete the removal of substantially damaged structures.

National Environmental Policy Act

This rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(vii).