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§ 68.7 Conduct of hearings.

(a) The Judge shall be responsible for the fair and expeditious conduct of proceedings.

(b) The Federal Insurance Administrator shall be represented by the Chief Counsel or his/her designee.

(c) One administrative hearing shall be held for any one community unless the Federal Insurance Administrator for good cause shown grants a separate hearing or hearings.

(d) The Chief Executive Officer (CEO) of the community or his/her designee shall represent all appellants from that community; *Provided*, That any appellant may petition the board to allow such appellant to make an appearance on his/her own behalf. Such a petition shall be granted only upon a showing of good cause.

(e) Hearings shall be open to the public.

(f) A verbatim transcript will be made of the hearing. An appellant may order copies of the transcribed verbatim record directly from the reporter and will be responsible for payments.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§ 68.8 Scope of review.

Review at administrative hearings shall be limited to: An examination of any information presented by each appellant within the 90 day appeal period indicating that elevations proposed by the Federal Insurance Administrator are scientifically or technically incorrect; the FIRM; the flood insurance study; its backup data and the references used in development of the flood insurance study; and responses by FEMA to the issues raised by the appellant(s).

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§ 68.9 Admissible evidence.

(a) Legal rules of evidence shall not be in effect at administrative hearings. However, *only* evidence relevant to issues within the scope of review under § 68.8 shall be admissible.

(b) Documentary and oral evidence shall be admissible.

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(c) Admissibility of non-expert testimony shall be within the discretion of the board.

(d) All testimony shall be under oath.

(e) *Res judicata*/collateral estoppel. Where there has been a previous determination, decision or finding of fact by the Director, one of his delegees, an administrative law judge, hearing officer, or hearing board regarding the base flood elevations of any other community, such determination, decision, or finding of fact shall not be binding on the board and may only be admissible into evidence if relevant.

§ 68.10 Burden of proof.

The burden shall be on appellant(s) to prove that the flood elevation determination is not scientifically or technically correct.

§ 68.11 Determination.

The board shall render its written decision within 45 days after the conclusion of the hearing. The entire record of the hearing including the board's decision will be sent to the Administrator for review and approval. The Administrator shall make the final base flood elevation determination by accepting in whole or in part or by rejecting the board's decision.

§ 68.12 Relief.

The final determination may be appealed by the appellant(s) to the United States district court as provided in section 1363(f) of the Act (42 U.S.C. 4104).

PART 69 [RESERVED]

PART 70—PROCEDURE FOR MAP CORRECTION

MAPPING DEFICIENCIES UNRELATED TO COMMUNITY-WIDE ELEVATION DETERMINATIONS

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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.

MAPPING DEFICIENCIES UNRELATED TO COMMUNITY-WIDE ELEVATION DETERMINATIONS

§ 70.1 Purpose of part.

The purpose of this part is to provide an administrative procedure whereby the Federal Insurance Administrator will review the scientific or technical submissions of an owner or lessee of property who believes his property has been inadvertently included in designated A, AO, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, and V Zones, as a result of the transposition of the curvilinear line to either street or to other readily identifiable features. The necessity for this part is due in part to the technical difficulty of accurately delineating the curvilinear line on either an FHBM or FIRM. These procedures shall not apply when there has been any alteration of topography since the effective date of the first NFIP map (i.e., FHBM or FIRM) showing the property within an area of special flood hazard. Appeals in such circumstances are subject to the provisions of part 65 of this subchapter.

[62 FR 55718, Oct. 27, 1997]

§ 70.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§ 70.3 Right to submit technical information.

(a) Any owner or lessee of property (applicant) who believes his property has been inadvertently included in a designated A, AO, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, and V Zones on a FHBM or a FIRM, may submit scientific or technical information to the Federal Insurance Administrator for the Federal Insurance Administrator's review.

(b) Scientific and technical information for the purpose of this part may include, but is not limited to the following:

(1) An actual copy of the recorded plat map bearing the seal of the appropriate recordation official (e.g. County Clerk, or Recorder of Deeds) indicating the official recordation and proper citation (Deed or Plat Book Volume and Page Numbers), or an equivalent identification where annotation of the deed or plat book is not the practice.

(2) A topographical map showing (i) ground elevation contours in relation to the National Geodetic Vertical Datum (NVGD) of 1929, (ii) the total area of the property in question, (iii) the location of the structure or structures located on the property in question, (iv) the elevation of the lowest adjacent grade to a structure or structures and (v) an indication of the curvilinear line which represents the area subject to inundation by a base flood. The curvilinear line should be based upon information provided by any appropriate authoritative source, such as a Federal Agency, the appropriate state agency (e.g. Department of Water Resources), a County Water Control District, a County or City Engineer, a Federal Emergency Management Agency Flood Insurance Study, or a determination by a Registered Professional Engineer;

(3) A copy of the FHBM or FIRM indicating the location of the property in question;

(4) A certification by a Registered Professional Engineer or Licensed Land Surveyor that the lowest grade adjacent to the structure is above the base flood elevation.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985; 51 FR 30317, Aug. 25, 1986; 53 FR 16280, May 6, 1988; 59 FR 53601, Oct. 25, 1994; 62 FR 55719, Oct. 27, 1997]

§ 70.4 Review by the Administrator.

The Administrator, 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

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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.

[66 FR 33900, June 26, 2001]

§ 70.5 Letter of Map Amendment.

Upon determining from available scientific or technical information that a FHBM or a FIRM requires modification under the provisions of § 70.4(b), the Administrator shall issue a Letter of Map Amendment which shall state:

(a) The name of the Community to which the map to be amended was issued;

(b) The number of the map;

(c) The identification of the property to be excluded from a designated A, AO, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, or V Zone.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985; 59 FR 53601, Oct. 25, 1994; 62 FR 55719, Oct. 27, 1997]

§ 70.6 Distribution of Letter of Map Amendment.

(a) A copy of the Letter of Map Amendment shall be sent to the applicant who submitted scientific or technical data to the Federal Insurance Administrator.

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(b) A copy of the Letter of Map Amendment shall be sent to the local map repository with instructions that it be attached to the map which the Letter of Map Amendment is amending.

(c) A copy of the Letter of Map Amendment shall be sent to the map repository in the state with instructions that it be attached to the map which it is amending.

(d) A copy of the Letter of Map Amendment will be sent to any community or governmental unit that requests such Letter of Map Amendment.

(e) [Reserved]

(f) A copy of the Letter of Map Amendment will be maintained by the Agency in its community case file.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 70.7 Notice of Letter of Map Amendment.

(a) The Federal Insurance Administrator, shall not publish a notice in the FEDERAL REGISTER that the FIRM for a particular community has been amended by letter determination pursuant to this part unless such amendment includes alteration or change of base flood elevations established pursuant to part 67. Where no change of base flood elevations has occurred, the Letter of Map Amendment provided under §§ 70.5 and 70.6 serves to inform the parties affected.

(b) [Reserved]

EDITORIAL NOTE: For a list of communities issued under this section and not carried in the CFR see the List of CFR Sections Affected, which appears in the Finding Aids Section of the printed volume and at www.govinfo.gov.

§ 70.8 Premium refund after Letter of Map Amendment.

A Standard Flood Insurance Policyholder whose property has become the subject of a Letter of Map Amendment under this part may cancel the policy within the current policy year and receive a premium refund under the conditions set forth in § 62.5 of this subchapter.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§ 70.9 Review of proposed projects.

An individual who proposes to build one or more structures on a portion of property that may be included inadvertently in a Special Flood Hazard Area (SFHA) may request FEMA's comments on whether the proposed structure(s), if built as proposed, will be in the SFHA. FEMA's comments will be issued in the form of a letter, termed a Conditional Letter of Map Amendment. 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 44 CFR part 72. All such requests for CLOMAs shall be submitted to the FEMA Regional Office servicing the community's geographic area or to the FEMA Headquarters Office in Washington, DC.

[62 FR 5736, Feb. 6, 1997]

PART 71—IMPLEMENTATION OF COASTAL BARRIER LEGISLATION

Sec.

- 71.1 Purpose of part.
- 71.2 Definitions.
- 71.3 Denial of flood insurance.
- 71.4 Documentation.
- 71.5 Violations.

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; 42 U.S.C. 4028; secs. 9 and 14, Pub. L. 101-591, 42 U.S.C. 4028(b).

SOURCE: 48 FR 37039, Aug. 16, 1983, unless otherwise noted.

§ 71.1 Purpose of part.

This part implements section 11 of the Coastal Barrier Resources Act (Pub. L. 97-348) and section 9 of the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591), as those Acts amend the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*).

[48 FR 37039, Aug. 16, 1983, as amended at 57 FR 22661, May 29, 1992]

§ 71.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in

part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part, a structure located in an area identified as being in the Coastal Barrier Resources System (CBRS) both as of October 18, 1982, and as of November 16, 1990, is "new construction" unless it meets the following criteria:

(1)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to October 18, 1982; and

(ii) The start of construction (see part 59) took place prior to October 18, 1982; *or*

(2)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to October 1, 1983; and

(ii) The structure constituted an insurable building, having walls and a roof permanently in place no later than October 1, 1983.

(c) For the purpose of this part, a structure located in an area newly identified as being in the CBRS as of November 16, 1990, is "new construction" unless it meets the following criteria:

(1) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1990; and

(2) The start of construction (see 44 CFR part 59) took place prior to November 16, 1990.

(d) For the purpose of this part, a structure located in an "otherwise protected area" is "new construction" unless it meets the following criteria:

(1)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1990; and

(ii) The start of construction took place prior to November 16, 1990; *or*

(2)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1991; and

(ii) The structure constituted an insurable building, having walls and a roof permanently in place, no later than November 16, 1991.