

§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.

§71.3

(e) For the purpose of this part, a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, is a “substantial improvement” if the substantial improvement (see 44 CFR part 59) of such structure took place on or after October 1, 1983.

(f) 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 a “substantial improvement” if the substantial improvement of such structure took place on or after November 16, 1990.

(g) For the purpose of this part, a structure located in an “otherwise protected area” is a “substantial improvement” if the substantial improvement of such structure took place after November 16, 1991.

(h) For the purpose of this part, a *policy of flood insurance* means a policy issued pursuant to the National Flood Insurance Act of 1968, as amended. This includes a policy issued directly by the Federal Government as well as by a private sector insurance company under the Write Your Own Program as authorized by 44 CFR part 62.

(i) For the purpose of this part, *new policy of flood insurance* means a policy of flood insurance other than one issued by an insurer (Write Your Own insurer or the Federal Government as the direct insurer) effective upon the expiration of a prior policy of flood insurance issued by the same insurer without any lapse in coverage between these two policies.

(j) For the purpose of this part, *new flood insurance coverage* means a new or renewed policy of flood insurance.

(k) For the purpose of this part, *otherwise protected area* means an undeveloped coastal barrier within the boundaries of an area established under Federal, State, or local law, or held by a qualified organization, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes and identified and depicted on the maps referred to in section 4(a) of the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990, as an area that is:

(1) Not within the CBRS and

44 CFR Ch. I (10–1–25 Edition)

(2) In an “otherwise protected area.”

[48 FR 37039, Aug. 16, 1983, as amended at 49 FR 33879, Aug. 27, 1984; 57 FR 22661, May 29, 1992]

§71.3 Denial of flood insurance.

(a) No new flood insurance coverage may be provided on or after October 1, 1983, for any new construction or substantial improvement of a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990.

(b) No new flood insurance coverage may be provided on or after November 16, 1990, for any new construction or substantial improvement of a structure located in any area newly identified as being in the CBRS as of November 16, 1990.

(c) No new flood insurance coverage may be provided after November 16, 1991, for any new construction or substantial improvement of a structure which is located in an “otherwise protected area.”

(d) Notwithstanding paragraph (c) of this section, new flood insurance coverage may be provided for a structure which is newly constructed or substantially improved in an “otherwise protected area” if the building is used in a manner consistent with the purpose for which the area is protected.

[57 FR 22662, May 29, 1992]

§71.4 Documentation.

(a) In order to obtain a new policy of flood insurance for a structure which is located in an area identified as being in the CBRS as of November 16, 1990, or in order to obtain a new policy of flood insurance after November 16, 1991, for a structure located in an “otherwise protected area,” the owner of the structure must submit the documentation described in this section in order to show that such structure is eligible to receive flood insurance. However, if the new policy of flood insurance is being obtained from an insurer (Write Your Own or the Federal Government as direct insurer) that has previously obtained the documentation described in this section, the property owner need only submit a signed written certification that the structure has not been

substantially improved since the date of the previous documentation.

(b) The documentation must be submitted along with the application for the flood insurance policy.

(c) For a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, where the start of construction of the structure took place prior to October 18, 1982, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure dated prior to October 18, 1982;

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his/her own knowledge or from official community records, that:

(i) The start of construction took place prior to October 18, 1982; and

(ii) The structure has not been substantially improved since September 30, 1983.

(d) For a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, where the start of construction of the structure took place on or after October 18, 1982, but the structure was completed (walls and roof permanently in place) prior to October 1, 1983, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure dated prior to October 1, 1983;

(i) If the community did not have a building permit system at the time the

structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his/her own knowledge or from official community records, that:

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

(ii) The structure has not been substantially improved since September 30, 1983; and

(3) A community issued final certificate of occupancy or other use permit or equivalent proof certifying the building was completed (walled and roofed) by October 1, 1983.

(e) For a structure located in an area newly identified as being in the CBRS as of November 16, 1990, where the start of construction of the structure took place prior to November 16, 1990, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1990.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the

§ 71.4

44 CFR Ch. I (10–1–25 Edition)

building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records, that:

(i) The start of construction took place prior to November 16, 1990; and

(ii) The structure has not been substantially improved since November 15, 1990.

(f) For a structure located in an area identified as an “otherwise protected area” where the start of construction of the structure took place prior to November 16, 1990, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1990.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records, that:

(i) The start of construction took place prior to November 16, 1990; and

(ii) The structure has not been substantially improved since November 16, 1991.

(g) For a structure located in an area identified as an “otherwise protected area” where the start of construction of the structure took place after November 15, 1990, but construction was completed with the walls and a roof permanently in place no later than No-

vember 16, 1991, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1991.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records that:

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

(ii) The structure has not been substantially improved since November 16, 1991; and

(3) A community issued final certificate of occupancy or other use permit or equivalent proof certifying that the building was completed (walled and roofed) by November 16, 1991.

(h) For a structure located in an area identified as an “otherwise protected area” for which the documentation requirements of neither paragraph (f) nor paragraph (g) of this section have been met, the documentation shall consist of a written statement from the governmental body or qualified organization overseeing the “otherwise protected area” certifying that the building is used in a manner consistent with the purpose for which the area is protected.

[48 FR 37039, Aug. 16, 1983, as amended at 57 FR 22662, May 29, 1992; 74 FR 15343, Apr. 3, 2009]

§ 71.5 Violations.

(a) Any flood insurance policy which has been issued where the terms of this section have not been complied with or is otherwise inconsistent with the provisions of this section, is void *ab initio* and without effect.

(b) Any false statements or false representations of any kind made in connection with the requirements of this part may be punishable by fine or imprisonment under 18 U.S. Code section 1001.

PART 72—PROCEDURES AND FEES FOR PROCESSING MAP CHANGES

Sec.

72.1 Purpose of part.

72.2 Definitions.

72.3 Fee schedule.

72.4 Submittal/payment procedures and FEMA response.

72.5 Exemptions.

72.6 Unfavorable response.

72.7 Resubmittals.

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 19387, 3 CFR, 1979 Comp., p. 376.

§ 72.1 Purpose of part.

This part provides 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.

[62 FR 5736, Feb. 6, 1997]

§ 72.2 Definitions.

Except as otherwise provided in this part, the definitions in 44 CFR part 59 are applicable to this part. For the pur-

poses 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 would, upon construction, 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 would, upon construction, 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 Special Flood Hazard Area (SFHA).

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

PMR. A PMR is FEMA's physical revision and republication of an effective FIRM, FBFM, or FIS report. PMRs are generally based on physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the