

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

**\*\*Effective May 17, 2001**

Pittsburgh, PA, Pittsburgh International, ILS RWY 10C, Orig  
 Pittsburgh, PA, Pittsburgh International, ILS RWY 28C, Orig  
 Union City, TN, Everett-Stewart, SDF RWY 1, Amdt 5, CANCELLED  
 Union City, TN, Everett-Stewart, NDB OR GPS RWY 1, Amdt 6  
 Union City, TN, Everett-Stewart, ILS RWY 1, Orig

**\*\*\*Effective July 12, 2001**

Dothan, AL, Dothan Regional, RNAV (GPS) RWY 14, Orig  
 Dothan, AL, Dothan Regional, RNAV (GPS) RWY 18, Orig  
 Tuskegee, AL, Moton Field Muni, VOR-A, Amdt 4  
 Tuskegee, AL, Moton Field Muni, RNAV (GPS) RWY 13, Orig  
 Tuskegee, AL, Moton Field Muni, RNAV (GPS) RWY 31, Orig  
 Bethel, AK, Bethel, VOR/DME-B, Orig  
 Bethel, AK, Bethel, RNAV (GPS)-A, Orig  
 Emmonak, AK, Emmonak, RNAV (GPS) RWY 16, Orig  
 Emmonak, AK, Emmonak, RNAV (GPS) RWY 34, Orig  
 Fort Smith, AR, Fort Smith Regional, RNAV (GPS) RWY 1, Orig  
 Fort Smith, AR, Fort Smith Regional, RNAV (GPS) RWY 7, Orig  
 Fort Smith, AR, Fort Smith Regional, RNAV (GPS) RWY 25, Orig  
 Fort Smith, AR, Fort Smith Regional, ILS RWY 25, Amdt 21  
 Fort Smith, AR, Fort Smith Regional, NDB RWY 7, Amdt 8  
 Fort Smith, AR, Fort Smith Regional, VOR/DME OR TACAN RWY 7, Amdt 11  
 Fort Smith, AR, Fort Smith Regional, RADAR-1, Amdt 8  
 Gainesville, FL, Gainesville Regional, RNAV (GPS) RWY 6, Orig  
 Gainesville, FL, Gainesville Regional, RNAV (GPS) RWY 10, Orig  
 Gainesville, FL, Gainesville Regional, RNAV (GPS) RWY 24, Orig  
 Gainesville, FL, Gainesville Regional, RNAV (GPS) RWY 28, Orig  
 Gainesville, FL, Gainesville Regional, GPS RWY 6, Orig, CANCELLED  
 Gainesville, FL, Gainesville Regional, GPS RWY 10, Orig, CANCELLED  
 Gainesville, FL, Gainesville Regional, GPS RWY 24, Orig, CANCELLED  
 Gainesville, FL, Gainesville Regional, GPS RWY 28, Orig, CANCELLED  
 Thomson, GA, Thomson-McDuffie County, NDB RWY 10, Orig  
 Thomson, GA, Thomson-McDuffie County, ILS RWY 10, Orig

Colby, KS, Shultz Field, RNAV RWY 17, Orig  
 Colby, KS, Shultz Field, RNAV RWY 35, Orig  
 Colby, KS, Shultz Field, NDB RWY 17, Amdt 1  
 Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 3, Orig  
 Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 16, Orig  
 Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 21, Orig  
 Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 34, Orig  
 Pittsburg, KS, Atkinson Muni, NDB-A, Orig  
 Pittsburg, KS, Atkinson Muni, VOR/DME RWY 3, Amdt 3  
 Pittsburg, KS, Atkinson Muni, NDB OR GPS RWY 16, Amdt 3A, CANCELLED  
 St. James, MN, St. James Muni, RNAV (GPS) RWY 15, Orig  
 St. James, MN, St. James Muni, RNAV (GPS) RWY 33, Orig  
 Columbia, MO, Columbia Regional, VOR RWY 13, Amdt 3  
 Columbia, MO, Columbia Regional, VOR RWY 20, Amdt 4  
 Columbia, MO, Columbia Regional, VOR/DME RWY 20, Amdt 3  
 Columbia, MO, Columbia Regional, NDB RWY 2, Amdt 9  
 Columbia, MO, Columbia Regional, RNAV (GPS) RWY 2, Orig  
 Columbia, MO, Columbia Regional, RNAV (GPS) RWY 13, Orig  
 Columbia, MO, Columbia Regional, RNAV (GPS) RWY 20, Orig  
 Columbia, MO, Columbia Regional, RNAV (GPS) RWY 31, Orig  
 Lebanon, MO, Floyd W. Jones Lebanon, RNAV RWY 18, Orig  
 Lebanon, MO, Floyd W. Jones Lebanon, RNAV RWY 36, Orig  
 Lebanon, MO, Floyd W. Jones Lebanon, NDB RWY 36, Amdt 6  
 Lebanon, MO, Floyd W. Jones Lebanon, SDF RWY 36, Amdt 5  
 Salem, MO, Salem Memorial, VOR-A, Orig  
 Salem, MO, Salem Memorial, RNAV (GPS) RWY 17 Orig  
 Salem, MO, Salem Memorial, RNAV (GPS) RWY 35, Orig  
 Washington, MO, Washington Memorial, RNAV RWY 16, Orig  
 Washington, MO, Washington Memorial, RNAV RWY 34, Orig  
 Washington, MO, Washington Memorial, VOR RWY 16, Amdt 2  
 Leighton, PA, Jake Arner Memorial, NDB RWY 8, Amdt 3  
 Leighton, PA, Jake Arner Memorial, NDB RWY 26, Amdt 4  
 Leighton, PA, Jake Arner Memorial, RNAV (GPS) RWY 8, Orig  
 Leighton, PA, Jake Arner Memorial, RNAV (GPS) RWY 26, Orig  
 Rapid City, SD, Rapid City Regional, VOR OR TACAN RWY 14, Orig-B  
 Rapid City, SD, Rapid City Regional, RNAV (GPS) RWY 14, Orig  
 Knoxville, TN, McGhee Tyson, RNAV (GPS) RWY 5L, Orig  
 Knoxville, TN, McGhee Tyson, RNAV (GPS) RWY 23R, Orig  
 Appleton, WI, Outagamie County Regional, RNAV (GPS) RWY 29, Orig

**Note:** The FAA published the following procedures in Docket No. 30243, Amdt. No.

2046 to Part 97 of the Federal Aviation Regulation (VOL 66, No. 78, Page 20392, dated Monday, April 23, 2001) under section 97.33 effective May 17, 2001, which are hereby amended as follows:

Change effective date to 12 July 2001 for the following procedures:

Dothan, AL, Dothan Regional, RNAV (GPS) RWY 14, Orig  
 Dothan, AL, Dothan Regional, RNAV (GPS) RWY 18, Orig  
 Emmonak, AK, Emmonak, RNAV (GPS) RWY 16, Orig  
 Emmonak, AK, Emmonak, RNAV (GPS) RWY 34, Orig

**Note:** The FAA published the following procedures in Docket No. 30243, Amdt. No. 2046 to Part 97 of the Federal Aviation Regulation (VOL 66, No. 78, Page 20392, dated Monday, April 23, 2001) under section 97.33 effective July 12, 2001, which are hereby amended as follows:

Wilmington, NC, Wilmington Intl, GPS RWY 6, Amdt 1A, Should Read: GPS RWY 6 Amdt 1A CANCELLED  
 Wilmington, NC, Wilmington Intl, GPS RWY 24, Amdt 1A, Should Read: GPS RWY 24 Amdt 1A CANCELLED

[FR Doc. 01-11255 Filed 5-3-01; 8:45 am]

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## **FEDERAL EMERGENCY MANAGEMENT AGENCY**

### **44 CFR Part 65**

#### **RIN 3067-AD13**

### **National Flood Insurance Program (NFIP); Letter of Map Revision and Letter of Map Revision Based on Fill Requests**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** This final rule changes procedures for issuing Letters of Map Revision (also referred to as LOMRs) and Letters of Map Revision Based on Fill (also referred to as LOMR-Fs). We use these criteria to determine whether a LOMR-F can be issued to remove unimproved land or land with structures from the Special Flood Hazard Area (SFHA) by raising ground elevations using engineered earthen fill.

**EFFECTIVE DATE:** June 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Technical Services Division, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3461, (facsimile) (202) 646-4596, or (email) [matt.miller@fema.gov](mailto:matt.miller@fema.gov).

**SUPPLEMENTARY INFORMATION:****Comments**

On October 10, 2000, we (FEMA) published a proposed rule at 65 FR 60159 that would revise the procedures under which we issue LOMRs and LOMR-Fs.

We received eight letters and e-mail messages about the proposed rule. Many of these contained multiple comments and, in a number of cases, the submissions raised similar issues and concerns. One organization submitted two sets of comments.

The following submitted comments on the proposed rule:

- Four State water resource agencies;
- One State association for the building industry;
- One national association for floodplain management;
- One regional association for communities;
- One private legal firm.

Each of the following sections treats an issue raised by the public during the comment period and explains our reasons for adopting, modifying, or rejecting a given recommendation.

*General Comments.* One commenter supported the proposed rule as written and urged its expeditious adoption. One commenter generally supported the rule change.

*Our Response:* None.

*Burden on Local Officials.* Two commenters expressed the opinion that the requirement for local communities to assure a building site as “reasonably safe from flooding” would impose a burden on them, and one suggested that FEMA should make the review and provide the assurance, if appropriate.

*Our Response:* It is important to note that the requirement for local communities to determine “whether proposed building sites will be reasonably safe from flooding” is not a new requirement. It has been a part of the NFIP regulations since at least January 8, 1973 (36 FR 24762, December 22, 1971, as amended at 38 FR 1001, January 8, 1973). Currently, this requirement applies to any community that has applied for and been accepted for participation in the NFIP. Further, the community may require that the property owner’s design professional provide the assurance that the structure is “reasonably safe from flooding”. We are also providing Technical Bulletin 10-00 to assist communities and design professionals in evaluating structures. This final rule simply emphasizes the long-standing requirement outlined in paragraph 60.3(a)(3) and therefore, does not impose any new burden on local communities.

*Certification of Data.* One commenter felt that the determination that land or structures are “reasonably safe from flooding” was beyond the expertise of many registered professional engineers and certified land surveyors. They suggested that the determination be made by a qualified design professional with appropriate expertise.

*Our Response:* The complexity of these determinations is highly dependent on site-specific conditions that will vary within the participating community. Furthermore, the ability of local governments to make these decisions will vary from community to community as will State laws regarding professional accreditation, certification, and licensing. This variability makes it difficult to prescribe a single solution applicable in all cases. We therefore will rely upon the judgment of the participating community and expect them to meet all State or local requirements regarding the use of design professionals when making these determinations.

*Communities May Lack Qualified Staff.* One commenter felt that many communities may not have qualified staff or resources to determine whether land or a structure is “reasonably safe from flooding”, and may choose not to make the determination.

*Our Response:* The technical bulletin is being provided to give guidance for determining when land or structures can be considered “reasonably safe from flooding”. In lieu of using the guidance in the technical bulletin, a community may choose to require the floodplain map revision requester’s qualified design professional assure the land or structures to be removed from the SFHA are “reasonably safe from flooding”. The participating community can then rely on the qualified design professional’s assurance if it so chooses. However, it is ultimately the participating community’s responsibility for assuring that the areas being removed from the SFHA are “reasonably safe from flooding.”

*Conflict with Section 60.3.* Three commenters noted that the proposed change to paragraph 65.5(a)(4) violates the provisions of paragraph 60.3(c)(2), in that it allows lowest floor elevations to be below the Base (100-year) Flood Elevation (BFE) and allows the structure to be removed from the SFHA, which in turn allows Federal financial assistance without the requirement of flood insurance coverage.

*Our Response:* It is not the intent of the rule to encourage or allow violations of existing Federal regulations. Therefore, the rule has been reworded to emphasize the minimum floodplain

management requirements of § 60.3 must be met before a revision to the SFHA can be made. The rule does allow for the removal of land or a structure when violations have occurred, but only after all violations have been remedied by the community to the maximum extent possible and the land or structures have been determined by the community to be “reasonably safe from flooding.”

*Use of Design Professionals.* Two commenters felt that a determination of “reasonably safe from flooding” should be made by a qualified design professional instead of the participating community.

*Our Response:* The participating community may, if it wishes, require that the party requesting removal of land or structures from the SFHA provide assurance by a qualified design professional that standard professional practices have been applied and that the criteria described in Technical Bulletin 10-00 have been, or will be met. If it so chooses, the community may rely on the design professional for assurance that the land or structures being removed from the SFHA are “reasonably safe from flooding.” However, it is ultimately the participating community’s responsibility to assure areas being removed from the SFHA are “reasonably safe from flooding.”

*Education Needed Before Rule Change.* One commenter supported the rule change but felt that education for community officials and property owners was needed first.

*Our Response:* The technical bulletin is being provided to guide and educate community officials, design professionals, and property owners considering development in SFHAs. The technical bulletin discourages unwise and unsafe building practices and emphasizes elevation as the preferred means of ensuring land and structures are “reasonably safe from flooding.”

*Flood-Proofed Residential Basements.* One commenter felt that the rule would create a variance for floodproofed residential basements outlined in § 60.6(c) without formal FEMA recognition, which would lead to requests for floodproofed rates for the structures. Another commenter felt that the requirements outlined in § 60.6(c) should be simplified so that all communities could allow floodproofed basements.

*Our Response:* The purpose of the rule is not to allow planning and construction of lowest floors below the BFE in filled floodplains. Rather the purpose is to provide a means of removing from the floodplain lands that

have been filled to or above the BFE. In some situations this process may result in revising flood hazard areas where violations of NFIP minimum floodplain management regulations have occurred. However, this will only occur if the violations are remedied to the maximum extent possible and the land or structures have been determined by the community to be "reasonably safe from flooding." If the community cannot do so, the LOMR-F will not be issued. If an area or structure is removed from the SFHA, the federally mandated purchase of flood insurance will not apply and the cost of flood insurance will likely go down. Flood-proofed residential structures built in communities in compliance with approved basement exception procedures are eligible for consideration under paragraph 65.5 (a)(4) of this final rule.

**Infrastructure.** One commenter asked the meaning of "infrastructure" in the proposed definition in § 65.2(c).

**Our Response:** The term "infrastructure" has been removed from the definition in the final rule.

**Insurance Waiver.** Two commenters suggested that, instead of allowing removal of land or structures from the SFHA designation, FEMA should simply issue a waiver of the insurance requirement.

**Our Response:** The requirement for flood insurance coverage for property located in an SFHA is statutory (42 U.S.C. 4012a(b)). The Flood Disaster Protection Act of 1973, as amended, requires that regulated lending institutions, Federal agency lenders, and government sponsored enterprises for housing examine the NFIP map to determine whether a property for which it is contemplating making, extending, or renewing a loan is in an SFHA. If so, they must place the requirement for flood insurance coverage on the property before completing the loan transaction. The requirement for flood insurance purchase is placed by the lending institution underwriting the loan and cannot be waived by any other party without a change in the Act.

**Status of States.** One commenter asked whether a State is considered a "community" with respect to the rule.

**Our Response:** A State is considered an NFIP community when it regulates its own actions on State lands and is exempt from local permitting requirements. Most States have separate statutory authority, regulations, or executive orders that apply to their own actions. In these situations the State agency responsible for overseeing floodplain development by the State would determine if an area was "reasonably safe from flooding." In

some instances a State and a community may both have permitting authority over development that takes place in that community. In these situations it is a matter of State law to determine whether the State or the community is the appropriate body to determine if an area is "reasonably safe from flooding."

**Unimproved Land Removed From SFHA.** Two commenters questioned how structures built after filled areas are removed from the SFHA would be affected by NFIP and community floodplain management requirements.

**Our Response:** Once the filled area is removed from the SFHA, it is by definition no longer subject to the minimum Federal requirements of § 60.3. However, this does not preclude participating communities or States from imposing additional restrictions should they choose to do so. Before land or structures can be removed from the SFHA, the community must assure that the areas are and will be "reasonably safe from flooding." It is up to the participating community to decide how this will be accomplished. However, in order to make this assurance they will likely have to know the location or proposed location of any buildings on the site or have other requirements in place to ensure that future development is constructed so that it will not be damaged during the base flood. See the Technical Bulletin 10-00 for further guidance on this issue.

#### Revised Procedures

This section discusses changes in the procedures used to process LOMR-F requests. These procedures will apply to single and multi-lot LOMR-F requests, which may involve one structure or multiple structures. These procedures also apply to LOMRs and they supersede the interim procedures published September 1, 1999, at 64 FR 47813. We will process all LOMR and LOMR-F requests received after June 4, 2001, as follows:

- Paragraphs 65.5(a)(1) through 65.5(a)(7) will apply to requests to remove land and structures involving the placement of engineered earthen fill.
- Paragraphs 65.6(a)(1) through 65.6(a)(15) will apply to requests for LOMRs.
- Community officials must continue to review map revision requests involving the placement of engineered earthen fill within the SFHA on the community's FIRM. As part of the community acknowledgement of LOMR and LOMR-F requests, the community must continue to assure that the minimum floodplain management criteria outlined in § 60.3 have been met.

- FEMA will not review a request for a LOMR or LOMR-F without community assurances that the request meets the requirements of § 60.3.

- We will consider structures built in identified SFHAs that do not meet the requirements of § 60.3 violations of NFIP regulations and will take appropriate action. Further, we will suspend review of these requests and others that are potentially in violation of NFIP regulations until the issues are resolved and all identified violations have been remedied through appropriate State and Federal entities including FEMA or its designee. Once all violations have been remedied by the community to the maximum extent possible and the community assures the land or structures are "reasonably safe from flooding," we will process the map revision request using the criteria outlined in § 65.5(a). Technical Bulletin 10-00 provides further guidance to community officials when determining whether land or structures are "reasonably safe from flooding."

- FEMA will review previously issued determinations for conformity with these revised procedures upon written request.

- New LOMR and LOMR-F requests and requests for redeterminations will be subject to the current fee schedule established in 44 CFR part 72.

#### National Environmental Policy Act

FEMA will not prepare an environmental analysis under NEPA since this rule would address an apparent administrative inconsistency that has no bearing on building practices or on the built or natural environment. This rule removes the current distinction between fill placed in an SFHA containing structures and fill placed in an SFHA without structures, both of which are allowable under current laws and regulations governing participation in the National Flood Insurance Program. Removing this distinction resolves an apparent inconsistency in the floodprone status of a subset of structures built on fill within the SFHA. These apparent inconsistencies resulted from differences in the administrative processes followed by communities who permit development in floodplains rather than from physical differences in the built environment. We will continue to allow earthen fill and other types of development within the SFHA when applicable, and we will continue to require residential structures built in identified flood hazard areas have their lowest floor (including basement) elevated to or above the base flood.

## Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to Office of Management and Budget (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 changes the criteria that we use to determine whether we can issue a LOMR or LOMR-F to remove unimproved land or land with structures from the SFHA by raising ground elevations using earthen fill. 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. To the extent possible this rule adheres to the principles of regulation as set forth in Executive Order 12866. This rule has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

## Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the OMB approved the collections of information applicable to this rule: OMB Number 3067-0147, 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).

Following is a summary of how each form will be used:

(a) *FEMA Form 81-87. Property Information.* This form describes the location of the property, what is being requested, and what data are required to support the request.

(b) *FEMA Form 81-87E. Credit Card Information.* This form outlines the information needed to process a request when the requester is paying processing fees by credit card.

(c) *FEMA Form 81-87A. Elevation Information.* This form indicates what the BFE for the property is, how the BFE was determined, the lowest ground elevation on the property, and/or the elevation of the lowest adjacent grade to any structures on the property. This information is required for FEMA to determine whether the property that is being requested to be removed from the SFHA is at or above the BFE.

(d) *FEMA Form 81-87C. Community Acknowledgment of Requests Involving Fill.* This form ensures that the participating community is aware of the revision request and that the requirements of § 60.3 have been met.

(e) *FEMA Form 81-87D. Summary of Elevations—Individual Lot Breakdown.* This form is used in conjunction with the Elevation Information Form for requests involving multiple lots or structures. It provides a table to allow the required submitted data to be presented in a manner for quick and efficient review.

The estimated burden on individual property owners is:

Property Information—1.63 hours  
Credit Card Form—0.1 hour  
Elevation Information—0.63 hour  
Community Acknowledgment of Requests Involving Fill—0.88 hour  
Summary of Elevations—Individual Lot Breakdown—0.67 hour

The number of requesters will vary from year to year, as we have no control over the number of people who will seek to have determinations made for their properties. For the purposes of this rule we estimate the following annual burdens:

Requesters—2,500  
Hours per response—3.91  
Total hours—9,775

## Regulatory Flexibility Act, 5 U.S.C. 601

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments). When an agency is required by 5 U.S.C. 553 to publish a notice of rulemaking, a regulatory flexibility analysis is required for both the notice and the final rule if the rulemaking could "have a significant economic impact on a substantial number of small entities." The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the

rulemaking will not "have a significant economic impact on a substantial number of small entities."

For the reasons that follow I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities. This rule is a clarification of existing policy and removes confusion and apparent inconsistencies in the current rule. We expect the rule to remove the current rule's adverse impact on property owners, including small entities. We expect the rule to enhance the ability of local officials to make sound floodplain management decisions more readily than under the current rule. We also expect the rule to reduce the administrative burden on property owners, including small entities. We further expect the rule will reduce certain building costs, without increasing the risks of flooding either to the owners or to the National Flood Insurance Program.

## Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria to which agencies must adhere 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 rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. As noted under Regulatory Planning and Review, this rule changes the criteria that we would use to determine whether we can issue a LOMR or LOMR-F to remove unimproved land or land with structures from the SFHA by raising ground elevations using engineered earthen fill. We know of no substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government that would result from this rule.

The OMB has reviewed this rule under the provisions of Executive Order 13132.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Reporting and recordkeeping requirements.

Accordingly, amend 44 CFR part 65 as follows:

**PART 65—IDENTIFICATION AND MAPPING OF SPECIAL 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 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Amend § 65.2 by adding paragraph (c) to read as follows:

**§ 65.2 Definitions.**

\* \* \* \* \*

(c) For the purposes of this part, “reasonably safe from flooding” means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

3. Revise § 65.5 to read as follows:

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

(a) *Data requirements for topographic changes.* In many areas of special flood hazard (excluding V zones and floodways) it may be feasible to elevate areas with engineered earthen fill above the base flood elevation. Scientific and technical information to support a request to gain exclusion from an area of special flood hazard of a structure or parcel of land that has been elevated by the placement of engineered earthen fill will include the following:

(1) A copy of the recorded deed indicating the legal description of the property and the official recordation information (deed book volume and page number) and bearing the seal of the appropriate recordation official (*e.g.*, County Clerk or Recorder of Deeds).

(2) If the property is recorded on a plat map, a copy of the recorded plat indicating both the location of the property and the official recordation information (plat book volume and page number) and bearing the seal of the appropriate recordation official. If the property is not recorded on a plat map, FEMA requires copies of the tax map or other suitable maps to help in locating the property accurately.

(3) A topographic map or other information indicating existing ground elevations and the date of fill. FEMA’s determination to exclude a legally defined parcel of land or a structure

from the area of special flood hazard will be based upon a comparison of the base flood elevations to the lowest ground elevation of the parcel or the lowest adjacent grade to the structure. If the lowest ground elevation of the entire legally defined parcel of land or the lowest adjacent grade to the structure are at or above the elevations of the base flood, FEMA will exclude the parcel and/or structure from the area of special flood hazard.

(4) Written assurance by the participating community that they have complied with the appropriate minimum floodplain management requirements under § 60.3. This includes the requirements that:

(i) Existing residential structures built in the SFHA have their lowest floor elevated to or above the base flood;

(ii) The participating community has determined that the land and any existing or proposed structures to be removed from the SFHA are “reasonably safe from flooding”, and that they have on file, available upon request by FEMA, all supporting analyses and documentation used to make that determination;

(iii) The participating community has issued permits for all existing and proposed construction or other development; and

(iv) All necessary permits have been received from those governmental agencies where approval is required by Federal, State, or local law.

(5) If the community cannot assure that it has complied with the appropriate minimum floodplain management requirements under § 60.3, of this chapter, the map revision request will be deferred until the community remedies all violations to the maximum extent possible through coordination with FEMA. Once the remedies are in place, and the community assures that the land and structures are “reasonably safe from flooding,” we will process a revision to the SFHA using the criteria set forth in § 65.5(a). The community must maintain on file, and make available upon request by FEMA, all supporting analyses and documentation used in determining that the land or structures are “reasonably safe from flooding.”

(6) Data to substantiate the base flood elevation. If we complete a Flood Insurance Study (FIS), we will use those data to substantiate the base flood elevation. Otherwise, the community may submit data provided by an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, State and local water resource departments, or

technical data prepared and certified by a registered professional engineer. If base flood elevations have not previously been established, we may also request hydrologic and hydraulic calculations.

(7) A revision of floodplain delineations based on fill must demonstrate that any such fill does not result in a floodway encroachment.

(b) *New topographic data.* A community may also follow the procedures described in paragraphs (a)(1) through (6) of this section to request a map revision when no physical changes have occurred in the area of special flood hazard, when no fill has been placed, and when the natural ground elevations are at or above the elevations of the base flood, where new topographic maps are more detailed or more accurate than the current map.

(c) *Certification requirements.* A registered professional engineer or licensed land surveyor must certify the items required in paragraphs (a)(3) and (6) and (b) of this section. Such certifications are subject to the provisions under § 65.2.

(d) *Submission procedures.* Submit all requests to the appropriate address serving the community’s geographic area or to the FEMA Headquarters Office in Washington, DC.

4. Amend § 65.6 by adding paragraphs (a)(14) and (15) as follows:

**§ 65.6 Revision of base flood elevation determinations.**

(a) \* \* \*

(14) The participating community must provide written assurance that they have complied with the appropriate minimum floodplain management requirements under § 60.3 of this chapter. This includes the requirements that:

(i) Existing residential structures built in the SFHA have their lowest floor elevated to or above the base flood;

(ii) The participating community has determined that the land and any existing or proposed structures to be removed from the SFHA are “reasonably safe from flooding,” and that they have on file, available upon request by FEMA, all supporting analyses and documentation used to make that determination;

(iii) The participating community has issued permits for all existing and proposed construction or other development; and

(iv) All necessary permits have been received from those governmental agencies where approval is required by Federal, State, or local law.

(15) If the community cannot assure that it has complied with the appropriate minimum floodplain management requirements under § 60.3, of this chapter the map revision request will be deferred until the community remedies all violations to the maximum extent possible through coordination with FEMA. Once the remedies are in place, and the community assures that the land and structures are “reasonably safe from flooding,” we will process a revision to the SFHA using the criteria set forth under § 65.6. The community must maintain on file, and make available upon request by FEMA, all supporting analyses and documentation used in determining that the land or structures are “reasonably safe from flooding.”

\* \* \* \* \*

Dated: April 30, 2001.

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 01-11156 Filed 5-3-01; 8:45 am]

BILLING CODE 6718-05-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 206

RIN 3067-AD20

#### Disaster Assistance; Public Assistance Program and Community Disaster Loan Program

**AGENCY:** Federal Emergency  
Management Agency (FEMA).

**ACTION:** Interim final rule.

**SUMMARY:** We, FEMA, are publishing an interim final rule to implement portions of the Disaster Mitigation Act of 2000 that affect large in-lieu contributions (alternate projects), irrigation facilities, critical/non-critical private nonprofit facilities, and community disaster loans.

**DATE:** Effective October 30, 2000.

Comments on this interim final rule should be received by July 3, 2001.

**ADDRESSES:** Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472, or (fax) (202) 646-4536, or (email) [rules@fema.gov](mailto:rules@fema.gov).

#### FOR FURTHER INFORMATION CONTACT:

Margaret Earman, Response and Recovery Directorate, Federal Emergency Management Agency, room 401, 500 C Street, SW., Washington, DC 20472, or call (202) 646-4172 or (email) [margie.earman@fema.gov](mailto:margie.earman@fema.gov).

#### SUPPLEMENTARY INFORMATION:

**Large in-lieu contributions.** The Disaster Mitigation Act of 2000 (DMA 2000), Pub. L. 106-390, 114 Stat. 1552 *et seq.*, amended the Federal contribution for Large in Lieu Contributions, which is known as “alternate projects” and is authorized under section 406(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5172, from 90 percent of the Federal share of the Federal estimate to 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility. There is an exception to this change for publicly-owned or -controlled facilities. When a State or local government applicant selects an alternate project because unstable soil at the site of the damaged facility makes repair or restoration of that facility infeasible, the Federal contribution remains at 90 percent. The soil conditions at the project site, which make restoration infeasible, will be established in a geo-technical report that the applicant must submit. All alternate projects are still approved on a project-by-project basis.

**Irrigation facilities.** The DMA 2000 amended section 102(9) of the Stafford Act, 42 U.S.C 5122 to add “irrigation” to the definition of private nonprofit (PNP) facilities. However, not all PNP irrigation facilities are eligible for assistance. The legislative history indicates that eligible irrigation facilities include those that supply water for “essential services of a governmental nature to the general public” (which is the requirement for any PNP to be eligible), such as fire suppression, generating and supplying electricity, and drinking water supply. They do *not* include those that supply water for agricultural purposes. If an irrigation system serves both eligible and ineligible purposes, assistance for those portions that serve both purposes will be prorated on the basis of the proportional share of water used. For those portions that serve an eligible purpose exclusively, all disaster-related damages to that portion would be eligible. Those portions serving an ineligible purpose exclusively will not be eligible.

**Critical/non-critical PNP facilities.** Under section 406(a)(3) of the Stafford Act, 42 U.S.C. 5172, as amended by the DMA 2000 and before receiving assistance under the Stafford Act certain non-critical PNP facilities must apply first to the Small Business Administration (SBA) for a disaster loan for permanent restoration work in those disasters when the SBA activates its

disaster loan program. DMA 2000 defines those critical services where the owner or operator need not apply to SBA to include: Water (including water provided by an irrigation organization or facility as discussed above), sewer, wastewater treatment, communications, and emergency medical care. We propose to add fire department services, emergency rescue, and nursing homes to the list of critical services.

Communication services means transmission, switching and distribution of telephone traffic. Emergency medical care includes essential direct patient care to persons and includes hospitals, clinics, outpatient services, and nursing homes. Owners and operators of these critical service facilities may apply directly to FEMA for assistance.

Other eligible, but non-critical, PNP facility owners or operators must apply to SBA for a disaster loan, and if SBA declines their application they may apply to FEMA for a grant. In addition, if the maximum loan for which they are eligible does not cover all eligible damages, they may apply to FEMA for the excess damages. The requirement for owners or operators of non-critical facilities to go first to SBA applies only to permanent restoration work. All eligible PNP facility owners and operators may make requests for assistance for debris removal and emergency protective measures directly to FEMA.

**Community Disaster Loans.** The DMA 2000 made two amendments to the Community Disaster Loan (CDL) program, section 417 of the Stafford Act, 42 U.S.C. 5184. The DMA 2000 sets a cap of \$5,000,000 on the amount of any community disaster loan that FEMA might make, and states that a local government will not be eligible for further community disaster loan assistance if the community is in arrears on any required repayment of a previous community disaster loan. We propose to amend 44 CFR 206.361 and 206.363 to reflect these statutory changes.

#### Administrative Procedure Act Statement

This interim final rule implements certain mandatory provisions of the Disaster Mitigation Act of 2000 that relate to the Public Assistance Program and the Community Disaster Loan Program, provisions that the Congress intended to go into effect upon enactment. In keeping with that intent, we are making this rule retroactively effective as of the date of enactment, October 30, 2000, for all disasters declared on or after that date. We seek and invite public comments, nevertheless, on this interim final rule,