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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 November 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.

(Approved by the Office of Management and Budget under control number 3067-0120)

[48 FR 37039, Aug. 16, 1983, as amended at 57 FR 22662, May 29, 1992]

**§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**

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## Federal Emergency Management Agency

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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, 44 FR 19367, 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 (LOMRs), 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 purposes 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 existing regulatory floodway, the effective base flood elevations, or the SFHA.

[62 FR 5737, Feb. 6, 1997]

### § 72.3 Fee schedule.

(a) For requests for CLOMRs, LOMRs, and PMRs based on structural measures on alluvial fans, an initial fee of \$5,000, subject to the provisions of § 72.4, shall be paid to FEMA before FEMA begins its review of the request. The initial fee represents the minimum cost for reviewing these requests and is based on the prevailing private-sector labor rate. A revision to this initial fee, if necessary, will be published as a notice in the FEDERAL REGISTER.

(b) For requests for CLOMRs, LOMRs, and PMRs based on structural measures on alluvial fans, the total fee will be calculated based on the total

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hours by FEMA to review and process the request multiplied by an hourly rate based on the prevailing private-sector labor rate. The hourly rate is published as a notice in the FEDERAL REGISTER. A revision to the hourly rate, if necessary, shall be published as a notice in the FEDERAL REGISTER.

(c) For conditional and final map revision requests for the following categories, flat user fees, subject to the provisions of § 72.4, shall be paid to FEMA before FEMA begins its review of the request:

(1) Requests for CLOMAs, CLOMR-Fs, and LOMR-Fs for single structures or single lots;

(2) Requests for CLOMAs for multiple structures or multiple lots;

(3) Requests for CLOMR-Fs and LOMR-Fs for multiple structures or multiple lots;

(4) Requests LOMR-Fs for single structures or single lots based on as-built information for projects for which FEMA issued CLOMR-Fs previously;

(5) Requests for LOMR-Fs for multiple structures or multiple lots based on as-built information for projects for which FEMA issued CLOMR-Fs previously;

(6) Requests for LOMRs and PMRs based on projects involving bridges, culverts, or channels, or combinations thereof;

(7) Requests for LOMRs and PMRs based on projects involving levees, berms, or other structural measures;

(8) Requests for LOMRs and PMRs based on as-built information for projects for which FEMA issued CLOMRs previously, except those based on structural measures on alluvial fans;

(9) Requests for LOMRs and PMRs based solely on more detailed data;

(10) Requests for CLOMRs based on projects involving new hydrologic information, bridges, culverts, or channels, or combinations thereof; and

(11) Requests for CLOMRs based on projects involving levees, berms, or other structural measures.

(d) If a request involves more than one of the categories listed above, the highest applicable flat user fee must be submitted.

(e) The flat user fees for conditional and final map amendments and map re-

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visions are based on the actual costs for reviewing and processing the requests. The fees for requests for LOMR-Fs, LOMRs, and PMRs also include a fee of \$35 to cover FEMA's costs for physically revising affected FIRM and FBFM panels to reflect the map changes.

(f) Revisions to the fees, if necessary, shall be published as a notice in the FEDERAL REGISTER.

[62 FR 5737, Feb. 6, 1997]

### § 72.4 Submittal/payment procedures and FEMA response.

(a) The initial fee shall be submitted with a request for FEMA review and processing of CLOMRs, LOMRs, and PMRs based on structural measures on alluvial fans; the appropriate flat user fee shall be submitted with all other requests for FEMA review and processing.

(b) FEMA must receive initial or flat user fees before it will begin any review. The fee is non-refundable once FEMA begins its review.

(c) Following completion of FEMA's review for any CLOMR, LOMR, or PMR based on structural measures on alluvial fans, FEMA shall invoice the requester at the established hourly rate for any actual costs exceeding the initial fee incurred for review and processing. FEMA shall not issue a determination letter or revised map panel(s) until it receives the invoiced amount.

(d) For all map revision requests, FEMA shall bear the cost of reprinting and distributing the revised FIRM panel(s), FBFM panel(s), or combination.

(e) The entity that applies to FEMA through the local community for review is responsible for the cost of the review. The local community incurs no financial obligation under the reimbursement procedures of this part when another party sends the application to FEMA.

(f) Requesters shall submit payments by check or money order or by credit card. Checks or money orders, in U.S. funds, shall be made payable to the National Flood Insurance Program.

(g) For CLOMA, CLOMR-F, LOMA, and LOMR-F requests, FEMA shall:

(1) Notify the requester and community within 30 days as to the adequacy of the submittal, and

(2) Provide to the requester and the community, within 60 days of receipt of adequate information and fee, a determination letter or other written comment in response to the request.

(h) For CLOMR, LOMR, and PMR requests, FEMA shall:

(1) Notify the requester and community within 60 days as to the adequacy of the submittal; and

(2) Provide to the requester and the community, within 90 days of receipt of adequate information and fee, a CLOMR, a LOMR, other written comment in response to the request, or preliminary copies of the revised FIRM panels, FBFM panels, and/or affected portions of the FIS report for review and comment.

[62 FR 5737, Feb. 6, 1997]

#### § 72.5 Exemptions.

Requesters are exempt from submitting review and processing fees for:

(a) Requests for map changes based on mapping or study analysis errors;

(b) Requests for map changes based on the effects of natural changes within SFHAs;

(c) Requests for a Letter of Map Amendment (LOMA);

(d) Requests for map changes based on federally sponsored flood-control projects where 50 percent or more of the project's costs are federally funded;

(e) Requests for map changes based on detailed hydrologic and hydraulic studies conducted by Federal, State, or local agencies to replace approximate studies conducted by FEMA and shown on the effective FIRM; and

(f) Requests for map changes based on flood hazard information meant to improve upon that shown on the flood map or within the flood study will be exempt from review and processing fees. Improvements to flood maps or studies that partially or wholly incorporate man-made modifications within the special flood hazard area will not be exempt from review and processing fees.

[64 FR 51462, Sept. 23, 1999]

#### § 72.6 Unfavorable response.

(a) Requests for CLOMAs, CLOMRs, or CLOMR-Fs may be denied or the determinations may contain specific comments, concerns, or conditions regarding proposed projects or designs and their impacts on flood hazards in a community. Requesters are not entitled to any refund of fees paid if the determinations contain such comments, concerns, or conditions, or if the requests are denied. Requesters are not entitled to any refund of fees paid if the requesters are unable to provide the appropriate scientific or technical documentation or to obtain required authorizations, permits, financing, etc., for which requesters seek the CLOMAs, CLOMRs, or CLOMR-Fs.

(b) Requests for LOMRs, LOMR-Fs, or PMRs may be denied or the revisions to the FIRM, FBFM, or both, may not be in the manner or to the extent desired by the requesters. Requesters are not entitled to any refund of fees paid if the revision requests are denied or if the LOMRs, LOMR-Fs, or PMRs do not revise the map specifically as requested.

[62 FR 5738, Feb. 6, 1997]

#### § 72.7 Resubmittals.

(a) Resubmittals of CLOMA, CLOMR, CLOMR-F, LOMR, LOMR-F, or PMR requests more than 90 days after FEMA notification that the requests were denied or after FEMA ended its review because the requester provided insufficient information will be treated as original submissions and subject to all submittal/payment procedures described in § 72.4. The procedure in § 72.4 also applies to a resubmitted request (regardless of when submitted) if the project on which the request is based has been altered significantly in design or scope other than as necessary to respond to comments, concerns, or other findings made by FEMA regarding the original submission.

(b) When LOMR, LOMR-F, or PMR requests are made after FEMA issues CLOMRs or CLOMR-Fs, the procedures in § 72.4 and the appropriate fee apply, as referenced in § 72.3(c). When the as-built conditions differ from the proposed conditions on which FEMA issued the CLOMRs or CLOMR-Fs, the

reduced fee for as-built requests will not apply.

[62 FR 5738, Feb. 6, 1997]

**PART 73—IMPLEMENTATION OF SECTION 1316 OF THE NATIONAL FLOOD INSURANCE ACT OF 1968**

Sec.

73.1 Purpose of part.

73.2 Definitions.

73.3 Denial of flood insurance coverage.

73.4 Restoration of flood insurance coverage.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 51 FR 30318, Aug. 25, 1986, unless otherwise noted.

**§ 73.1 Purpose of part.**

This part implements section 1316 of the National Flood Insurance Act of 1968.

**§ 73.2 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 *duly constituted State or local zoning authority or other authorized public body* means an official or body authorized under State or local law to declare a structure to be in violation of a law, regulation or ordinance.

(c) For the purpose of this part, *State or local laws, regulations or ordinances intended to discourage or restrict development or occupancy of flood-prone areas* are measures such as those defined as *Flood plain management regulations* in § 59.1 of this subchapter. Such measures are referred to in this part as State or local flood plain management regulations.

**§ 73.3 Denial of flood insurance coverage.**

(a) No new flood insurance shall be provided for any property which the Administrator finds has been declared by a duly constituted State or local zoning authority or other authorized public body, to be in violation of State or local laws, regulations or ordinances which are intended to discourage or

otherwise restrict land development or occupancy in flood-prone areas.

(b) New and renewal flood insurance shall be denied to a structure upon a finding by the Administrator of a valid declaration of a violation.

(c) States and communities shall determine whether to submit a declaration to the Administrator for the denial of insurance.

(d) A valid declaration shall consist of:

(1) The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;

(2) A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance;

(3) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;

(4) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and

(5) A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended.

**§ 73.4 Restoration of flood insurance coverage.**

(a) Insurance availability shall be restored to a property upon a finding by the Administrator of a valid rescission of a declaration of a violation.

(b) A valid rescission shall be submitted to the Administrator and shall consist of:

(1) The name of the property owner(s) and an address or legal description of the property sufficient to identify the property and to enable FEMA to identify the previous declaration;

(2) A clear and unequivocal statement by an authorized public body rescinding the declaration and giving the reason(s) for the rescission;

(3) A description of and supporting documentation for the measures taken in lieu of denial of insurance in order to bring the structure into compliance with the local flood plain management regulations; and

(4) A clear statement that the public body rescinding the declaration has the