



Federal Emergency Management Agency

Washington, D.C. 20472

February 17, 2000

MEMORANDUM FOR: Doug Bellomo, P.E., Project Officer
Eastern Studies Team

Mike Grimm, Project Officer
Western Studies Team

[Original Signed]

FROM: Matthew B. Miller, P.E., Chief
Hazards Study Branch

SUBJECT: Procedure Memorandum No. 10 - Guidance on the New Fee Charge
Structure

Background: On September 23, 1999, FEMA published a Final Rule regarding procedures and fees for processing map changes (copy attached). Under this rule, map change requests based on flood hazard information meant to improve upon the information contained on the flood map or within the flood study will be exempt from review and processing fees. The rule also states that improvements to flood maps or studies, which partially or wholly incorporate man-made modifications within the Special Flood Hazard Area (SFHA) will not be exempt from review and processing fees. This Final Rule adds exemption (f) to Part 72.5 of the CFR. The purpose behind this rule is to encourage communities or other entities to submit new/improved flood hazard information in approximate Zone A areas (specifically when the data was not generated by a Federal, State, or local agency) as well as the submittal of improved flood hazard information in detailed study areas. The submittal of this flood data will serve to update Flood Insurance Rate Maps, thereby improving the flood maps, strengthening local floodplain management initiatives, and reducing FEMA restudy costs.

The intent of fee exemptions (a)-(f) contained in Part 72.5 of the CFR is to avoid penalizing revision requestors when the flood maps contain an error and to encourage the submittal of more detailed data for approximate Zone A areas, and new or improved data when changes (not associated with development projects within the SFHA) have occurred.

Issue: Further guidance is needed to clarify what is meant by *improving* flood hazard information shown on a flood map, especially in areas where the FIRM contains BFEs and a floodway; what constitutes an *error*; and where to draw the line between man-made changes within an SFHA and other man-made changes outside the SFHA that affect the flood hazard data.

Final Procedure: Clarification of the review and processing fee exemption criteria is summarized below:

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

Some clarification is needed to define what constitutes an “error”. A computational error in the hydrologic or hydraulic model, inconsistency between the BFEs shown on the FIRM and those contained on the flood profiles, flood boundaries not following the contours on the workmap, and the omission of a bridge or culvert in a detailed study area that was overlooked at the time of the FEMA study are examples of errors. The addition of cross sections in a detailed study area to better define the floodplain would not be considered an “error” nor would a new study for an area that was shown as approximate Zone A on a FIRM. (Refer to exemptions (e) and (f) discussed below.)

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

Examples of natural changes within SFHAs would be stream erosion or meandering, naturally occurring sedimentation in the stream channel or overbank, or significant changes in vegetative cover due to growth of new vegetation or the loss of vegetation caused by wildfire or other natural event such as prolonged drought. Because this exemption is limited to natural changes within the SFHA, a new hydrologic analysis that takes into account current runoff conditions in the watershed would not be considered under this exemption, but could warrant exemption under (e) or (f) as discussed below.

Exemption (c) - Requests for a Letter of Map Amendment

This exemption is self-explanatory and requires no clarification.

Exemption (d) - Requests for map changes based on Federally sponsored flood-control projects

This exemption is self-explanatory and requires no clarification.

Exemption (e) - Requests based on detailed hydrologic and hydraulic studies conducted by Federal, State, or local agencies to replace approximate studies

The intent of this exemption has always been to encourage those who generate more detailed flood hazard information for approximate Zone A areas to submit it to FEMA for inclusion on the flood maps. By definition, entities other than those listed under the exemption criteria would not be exempt from processing fees under exemption (e), but would be under exemption (f). It should be noted that more detailed studies for approximate Zone A areas could include the effects of man-made changes within or outside the SFHA. Typically a new more detailed study for an approximate Zone A area would have a hydrologic analysis that takes into account current runoff conditions in the watershed. These analyses would include the effects of development that occurred since the flood map was produced. Sorting out whether these changes are due to development inside or outside the SFHA would be difficult to determine, and therefore, would not be evaluated for the purpose of denying fee exemption. Obvious man-made changes within the SFHAs such as new bridges or culverts, fill, structural flood control measures, or stream modifications can be detected and could result in the imposition of processing fees.

Exemption (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

The term “improve” is not defined. However, it is anticipated that this exemption would cover the following situations so long as they do not include, in part or wholly, man-made changes within the SFHA:

- Detailed hydrologic and hydraulic studies for approximate Zone A areas conducted by entities other than Federal, State, and local agencies as addressed in exemption (e).
- Revised hydraulic analyses based on additional cross sections to better define the 100-year floodplain.
- Revised hydrologic analyses based on more detailed landuse/landcover data. (So long as the data does not include the effects of man-made changes within the SFHA.)
- Revised floodplain boundaries based on more detailed topography in approximate or detailed study areas.

It should be noted that changes in floodway boundaries not associated with physical changes within the SFHA would not be exempt from processing fees. However, errors in the floodway delineation or modeling would be exempt from fees under category (a).

Generally, for detailed studied streams where a bridge or detention facility was overlooked when the original study was conducted should be considered an “error” and should be fee exempt under category (a) rather than this category. However, there may be cases where the original study was of limited scope/budget, or was based on a study conducted by an entity other than FEMA. In these cases, the addition of overlooked bridges or culverts should be considered an “improvement” and therefore would be fee exempt under this category.

Other Considerations

There will still be cases that are not clearly exempt under categories (a)-(f). In such cases the FEMA Project Engineers and Project Officers will have to use their best judgement in determining if fees should be waived. Cooperating Technical Communities (CTCs) may play a key role in these situations and may, in fact, be a determining factor in waiving processing fees if there is specific mention of fee waivers in their agreement with FEMA.

It should also be noted that any potential floodplain management violations identified through the submittal of new or revised flood hazard data need to be closely coordinated with the FEMA Regional Office.

cc: see distribution list

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**FEDERAL EMERGENCY
MANAGEMENT AGENCY****44 CFR Part 72**

RIN 3067-AC88

**National Flood Insurance Programs;
Procedures and Fees for Processing
Map Changes**AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule revises the National Flood Insurance program (NFIP) regulations concerning the procedures and fees for processing changes to NFIP maps by removing the fee payment requirements for processing certain changes. Under this rule, map change requests 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, which partially or wholly incorporate man-made modifications within the special flood hazard area, will not be exempt from review and processing fees.

EFFECTIVE DATE: This rule is effective on September 23, 1999.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, by telephone at (202) 646-3461, by facsimile at (202) 646-4596 (not toll-free calls), or by e-mail at matthew.miller@fema.gov.

SUPPLEMENTARY INFORMATION: This final rule revises the NFIP regulation governing fee requirements for processing certain changes to NFIP maps. We established the current fee requirements under a final rule published in the **Federal Register** on February 6, 1997, 62 FR 5734.

Under current standards, request 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 Special Flood Hazard Areas (SFHAs);
- (c) Request 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 Flood Insurance Rate Map (FIRM).

This rule maintains the fee exemptions for map change requests in Items (a) through (e) above, and adds a new exemption in subsection 72.5(f), which exempts requesters from paying review and processing fees when the aim of the request is to improve flood hazard information shown on the flood map or within the flood study. Proposed improvements to the flood hazard information that partially or wholly incorporate man-made modifications within the special flood hazard area will not be exempt from review and processing fees.

These final revisions to the NFIP regulations are a result of our continuing reappraisal of the NFIP in order to achieve greater administrative and fiscal effectiveness and to encourage sound floodplain management.

**Administrative Procedure Act
Determination.**

We are publishing this final rule without opportunity for prior public comment under the Administrative Procedure Act, having determined that it is a rule of agency procedure or practice excepted under 5 U.S.C. 553(b)(A). We are further making this rule effective immediately upon publication in the **Federal Register** under 5 U.S.C. 553(d)(1), for substantive rules that grant or recognize an exemption.

National Environmental Policy Act

44 CFR Part 10, Environmental Consideration categorically excludes this final rule from its requirements. We have not prepared an environmental impact assessment.

Regulatory Flexibility Act

As Director, I certify that this final rule does not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. *et seq.*, because it is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on small entities. We have not prepared a regulatory flexibility analysis.

Paperwork Reduction Act.

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

**Executive Order 12866, Regulatory
Planning and Review**

42 U.S.C. 4014(f). Promulgation of this final rule is required by statute, which also specifies the regulatory approach taken in the final rule. To the extent possible under the statutory requirements of 42 U.S.C. 4014(f), this final rule adheres to the principles of regulation as set forth in Executive Order 12866, Regulatory Planning and Review.

**Congressional Review of Agency
Rulemaking.**

We have sent this final rule to the U.S. Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801 *et seq.* The rule is not a "major rule" within the meaning of that Act. It does not result in, nor is it likely to result in an annual effect on the economy of \$100,000,000 or more. It will not result in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not have "significant adverse effects" on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) From the requirements of the Regulatory Flexibility Act, as certified previously, and (2) from the Paperwork Reduction Act.

This rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4. The rule does not meet the \$100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 72

Administrative practice and procedure, Flood insurance, Floodplains, and Reporting and recordkeeping requirements.

Accordingly, we amend Part 72 as follows:

**PART 72—PROCEDURES AND FEES
FOR PROCESSING MAP CHANGES**

1. The authority citation for part 72 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, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. We revise section 72.5 to read as follows:

§ 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.

Dated: September 9, 1999.

James L. Witt,

Director.

[FR Doc. 99-24559 Filed 9-22-99; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 97-213; FCC 99-11]

Implementation of the Communications Assistance for Law Enforcement Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document establishes limited rules to ensure that carriers have policies and procedures in place that require the affirmative intervention by and knowledge of, their employees in effectuating any interception through their switching premises, and that such interception is done lawfully and documented carefully. The decision mandates that this be done by appointment of a designated senior officer or employee by each carrier

company who is responsible for maintaining such security procedures. The decision also establishes reporting and recordkeeping requirements for informing law enforcement officials of all acts of unauthorized electronic surveillance that occur on the carriers' premises, as well as any compromises of the carriers' systems security and integrity procedures that involve the execution of electronic surveillance. Finally, the decision adopts filing requirements for large and small carriers. This document contains modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, and has been submitted to the Office of Management and Budget (OMB) for review under the section 3507 of the PRA.

DATES: Effective December 22, 1999 except for §§ 64.2103, 64.2104, and 64.2105, which contain information collection requirements that have not been approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. Public comment on the information collections are due November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Wasilewski, 202-418-1310. For further information concerning the information collections contained in this Report and Order, contact Les Smith, Federal Communications Commission, Room 1A-804, 445 12th Street, S.W., Washington, DC 20054, or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (R&O) in CC Docket No. 97-213; FCC 99-11, adopted January 29, 1999, and released March 15, 1999. The complete text of this R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY-B400, 445 12th Street, S.W., Washington, DC.

Synopsis of the Report and Order

1. The Commission adopts a Report and Order (R&O) in CC Docket No. 97-213, regarding implementation of the Communications Assistance for Law Enforcement Act (CALEA).¹ The R&O establishes systems security and integrity regulations that all telecommunications carriers must follow to comply with section 105 of

CALEA. The regulations were proposed in the Notice of Proposed Rule Making (NPRM) in this proceeding, which can be found at 62 FR 63302, November 11, 1997. The R&O adopts these regulations pursuant to the authority granted to the Commission under section 105 of CALEA and section 229 of the Communications Act of 1934, as amended. Accordingly, the R&O finds that telecommunications carriers must ensure that "any interception of communications or access to call-identifying information effected within its switching premises can be activated only in accordance with a court order or other lawful authorization and with the affirmative intervention of an individual officer or employee of the carrier"² acting in accordance with the regulations adopted in the R&O and sections 229(b) and (c) of the Communications Act.

2. While recognizing that certain carriers currently have existing policies and procedures in place to secure and protect their telecommunications systems in a manner that would comply with section 105 of CALEA and sections 229(b) and (c) of the Communications Act, the R&O finds that the void created by those carriers without such policies and procedures demands adoption of minimum set of requirements that will ensure compliance with section 105 of CALEA and sections 229(b) and (c) of the Communications Act. The R&O declines, however, to adopt specific or detailed policies and procedures that telecommunications carriers must include within their internal operating practices to ensure compliance, because, as the R&O further finds, it is not the Commission's responsibility to "micro-manage" telecommunications carriers' corporate policies. The rules adopted in the R&O are intended to provide carriers with guidance as to the minimum requirements necessary to achieve compliance with section 105 of CALEA and sections 229(b) and (c) of the Communications Act in the least burdensome manner possible.

3. The R&O mandates that carriers, as part of their policies and procedures, must appoint the senior authorized officer(s) or employee(s) whose job function includes being a point of contact for law enforcement on a daily, around-the-clock basis. Carriers must include in their policies and procedures a description of the job functions of such points of contact and a method to enable law enforcement authorities to contact these individuals.

4. Although the Commission declines to adopt a proposal to require carriers to

¹Public Law 103414, 108 Stat. 4279 (1994).

²47 U.S.C. 1004.