

lender's or its agent's determination. Section 524 of the NFIRA states that FEMA shall provide to the borrower and the lender a letter stating whether or not the building or manufactured home is in an area having special flood hazards.

Status inquiries. One responder wanted to know how to obtain the status of the request after submission.

Response. Due to the anticipated volume of requests, such inquiries will not be accommodated. We plan to acknowledge receipt of the request within five days and to issue the final response within 45 days.

Elevation data. A responder asked that the final rule explicitly state that FEMA will not consider elevation data for this review. The same responder advocated that the determination review process not result in the initiation of the LOMA/LOMR process.

Response. This is stated in the final rule under 44 CFR 65.17(a).

Miscellaneous Comments

Definition of "in SFHA" and "partially in SFHA". One responder asked that "in the SFHA" be defined and another responder asked how we would deal with reviews of "part in, part out".

Response. The SFHA is delineated on the NFIP map for the community. For purposes of this procedure, if any part of the structure is indicated to be in the SFHA on the NFIP map, the structure is considered to be in the SFHA and flood insurance is required. The flood insurance purchase requirement applies to *insurable structures*. If a portion of the land lies in the SFHA, the purchase of flood insurance is not Federally mandated unless the structure itself is indicated to be in or partially in the SFHA.

Determinations "Pursuant to a Revision." Several responders asked us to clarify whether these determination review procedures were available in the case of a FEMA remapping.

Response. These procedures are available for the review of lender determinations when requested within 45 days after the borrower was notified that flood insurance is required, regardless of the impetus of the request. However, the intent of the determination review procedures is to allow a mechanism for FEMA to review a lender's or its agent's determination when specifically requested. FEMA will return requests at the outset if the submitted Standard Flood Hazard Determination Form is based on an outdated map panel. After the lender conducts or obtains a determination using the current map panel in effect, FEMA will review the determination

upon request if the request meets the stipulated criteria.

Applicability of Process. One responder asked if the procedure would apply to existing loans as well as loan originations.

Response. The process is available within 45 days after the lender advises the borrower that flood insurance is required as a condition for the loan. Therefore, this procedure applies to all loans.

Guarantee. One responder asked whether FEMA would guarantee its determination.

Response. No. A guarantee is only required if a third party completes the Standard Flood Hazard Determination Form for a lender. FEMA is not authorized to guarantee these determinations. However, FEMA will review the available data and ensure that the determinations are as accurate as possible.

Initial Determinations. One responder suggested that FEMA should provide initial flood hazard determinations.

Response. Although the NFIRA does not prohibit FEMA from providing initial flood hazard determinations, we interpret section 524 as providing a mechanism for FEMA to review and resolve appeals on others' determinations. As indicated in the NFIRA, FEMA's determination shall be final. As stated earlier, FEMA's review of a determination is based on the data provided by others that allowed the original determination to be made. FEMA's review of the determination will correct an error, if one was made in locating a structure relative to a mapped SFHA, but does not change the map, the location of the property on the map, or the findings of a third party determinator or lender if they correctly used the available data. Other procedures with additional data requirements are available through FEMA's LOMA and LOMR processes.

Upholding original determinations due to insufficient information. One responder asked for clarification on why the original determination would be "upheld" instead of "withheld" if insufficient information was submitted to review the determination.

Response. FEMA will presume the lender or lender's agent has made the correct determination and predicts that most determinations will not be submitted to FEMA for review. Therefore, the lender's determination is considered valid until found to be in error. We have revised the language in 44 CFR 65.17(c)(2) to clarify this issue.

Unusual cases. A responder asked for clarification of the term "unusual cases."

Response. This may have been a poor choice of words in the proposed rule. If the lender or third party determinator uses prudent and reasonable judgment in their evaluations, disputes should not arise that would require a determination review by FEMA.

Use of term "mobile home." One responder stated that 44 CFR 65.17 should use the term "manufactured home" instead of "mobile home" to be consistent with the NFIP regulations.

Response. Section 65.17 has been changed to use the term "manufactured home."

National Environmental Policy Act

This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule would not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it would not be 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. Moreover, establishing a procedure for FEMA's review of determinations is required by the National Flood Insurance Reform Act of 1994, 42 U.S.C. 4012a. A regulatory flexibility analysis has not been prepared.

Regulatory Planning and Review

This final rule would not be a significant regulatory action under Executive Order 12866 of September 30, 1994, Regulatory Planning and Review, 58 FR 51735. To the extent possible this rule adheres to the principles of regulation as set forth in Executive Order 12866. This rule has not been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Paperwork Reduction Act

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

Executive Order 12612, Federalism

This final rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.