

Chapter 8

Revisions Based on “Adequate Progress” (Zone A99) Determinations

8.1 Background

As administrator of the National Flood Insurance Program (NFIP), the Federal Emergency Management Agency (FEMA) is **not** responsible for building, maintaining, operating, or certifying levee systems. FEMA does, however, develop and enforce the regulatory and procedural requirements that are used to determine whether a **completed** levee system should be accredited on a Flood Insurance Rate Map (FIRM) or Digital Flood Insurance Rate Map (DFIRM). These criteria are documented in Section 65.10 of the NFIP regulations, titled “Mapping of Areas Protected by Levee Systems.”

The following resources help guide mapping in levee-impacted areas:

- Appendix H, “Guidance for Mapping of Areas Protected by Levee Systems,” of FEMA’s *Guidelines and Specifications for Flood Hazard Mapping Partners*;
- Numerous FEMA Procedure Memorandums issued to clarify the regulatory and procedural requirements for FEMA staff, contractors, and mapping partners; and

- “Meeting the Criteria for Accrediting Levees on FEMA’s Flood Maps: How-To Guide for Floodplain Managers and Engineers.”

These resources and the other resources related to levee systems discussed in this *Guide* are posted in the FEMA Library (<http://www.fema.gov/library/index.jsp>) and are accessible through levee-dedicated pages on the FEMA Website. The gateway to the FEMA-provided levee system information is www.fema.gov/plan/prevent/fhm/lv_intro.shtm.

FEMA relies on Federal, State, and local agencies and private levee owners to provide them with data and documentation on levee systems so that the hazards in levee-impacted areas may be presented accurately on the FIRM/DFIRM, in the associated Flood Insurance Study (FIS) report, and in related products. Requirements related to appeals involving completed levee systems are provided in Chapter 3 of this *Guide*.

FEMA also develops and enforces regulatory and procedural requirements for levee systems that are being constructed for the first time or that are being restored to or above the base (1-percent-annual-chance) flood design level. These requirements are presented in Sections 61.12 and 65.14 of the NFIP regulations and in the previously referenced Appendix H and Procedure Memorandums.

As with completed levee systems, FEMA relies on Federal, State, and local agencies to provide data and documentation regarding new and restored levee systems.

8.2 Community, State, and Federal Responsibilities

Communities, State agencies, and Federal agencies may construct new levee systems to address flood hazards and reduce flood risks to structures and people in a particular community or particular area of a state. Likewise, these communities and agencies may undertake a project to restore the flood protection capability of a levee system that had previously been accredited, thereby reducing the flood risk to the people and structures located in levee-impacted areas.

When communities, State agencies, and Federal agencies undertake such projects, they will want to submit the appropriate data and documentation to FEMA, so that FEMA may present updated, accurate flood hazard information in the levee-impacted areas on the maps and related documents. The required data and documentation will vary, depending on the type of determination that the community would like FEMA to make regarding the project and the flood insurance risk zone designation that the community would like FEMA to include on the effective FIRM or DFIRM for that community.

Once a flood protection project, such as a levee system, that is intended to be accredited has reached certain completion milestones, a community may submit the data and documentation required by Section 61.12 of the NFIP regulations and request an "adequate progress" determination from FEMA.

8.3 Eligibility Requirements

In accordance with Section 61.12 of the NFIP regulations, FEMA may issue adequate progress determinations for construction of flood protection systems, such as levee systems, involving Federal funds that will significantly limit the area of a community that will be included in the identified Special Flood Hazard Area (SFHA). The SFHA is the high-risk area that will be inundated by the base flood. Such projects reduce, but do not eliminate, the risk of flooding to people who live and work in these levee-impacted areas or to the structures in which they live and work.

The Chief Executive Officer (CEO) of the community or another responsible community official designated by the CEO, such as the floodplain administrator (FPA), may request that FEMA make an adequate progress determination for a construction project and revise the effective FIRM or DFIRM to designate the SFHA in the levee-impacted area as Zone A99. The CEO, FPA, or other community official may only request an adequate progress determination when Federal funds are used for the project and the completion milestones discussed below are met.

8.4 Application and Submittal Requirements

In accordance with Paragraph 61.12(b) of the NFIP regulations, the FEMA office that serves the community or communities affected by the project must receive information from the sponsoring community indicating that the project meets *all* of the following requirements:

- 100 percent of the total financial project cost of the completed flood protection system has been authorized;
 - At least 50 percent of the total financial project cost of the completed flood protection system has been expended;
 - At least 60 percent of the total financial project cost of the completed flood protection system has been appropriated;
 - All critical features of the flood protection system, as identified by FEMA, are under construction, and each critical feature is 50 percent completed as measured by the actual expenditure of the estimated construction budget funds; and
 - The community has not been responsible for any delay in the completion of the system.
- Supporting technical data (e.g., U.S. Army Corps of Engineers project data);
 - Cost schedules;
 - Budget appropriation data;
 - Extent of Federal funding of system construction;
 - Full and precise statement of the purpose of the system;
 - Information sufficient to identify all persons affected by system/project;
 - Carefully detailed description of project, including construction completion target dates; and
 - True copies of *all* contracts, agreements, leases, instruments, and other documents.

Relevant facts reflected in the submitted documents must be included in the statement and not merely incorporated by reference, and must be accompanied by an analysis of their bearing on the requirements of Paragraph 61.12(b) of the NFIP regulations, specifying the pertinent provisions.

The request must contain a statement whether, to the best of the knowledge of the person responsible for preparing the application for the community, the project is currently the subject matter of litigation before any Federal, State, or local court or administrative agency, and the purpose of that litigation.

The request also must contain a statement as to whether the community has previously requested an adequate progress determination for the project from FEMA, detailing the disposition of such previous request.

See Appendix E of this *Guide* for the address of the appropriate FEMA office.

Each request must contain a complete statement of all relevant facts relating to the flood protection system, including, but not limited to, the following:

Note: Documents submitted to FEMA become part of the agency's files and cannot be returned; therefore, the community should not submit the original documents.

8.5 FEMA Review and Response

FEMA will review all data and documentation submitted in support of the community's application for the adequate progress determination. Upon completing this review, FEMA will respond, in writing, to the CEO of the community in accordance with the procedures specified in Section 65.9 of the NFIP regulations. FEMA will send copies of the written determination to the community FPA and the community official that submitted the request if it was not submitted by the CEO or FPA.

If FEMA issues an adequate progress determination, FEMA will prepare new or revised FIRM or DFIRM panels that designate the flood hazard areas that are impacted by the levee system as Zone A99. FEMA will map the areas impacted by internal drainage associated with the 1-percent-annual-chance flood as Zone A, AE, AH, or AO as appropriate.

8.6 Requirements for Maintaining Zone A99 Designation

To maintain the Zone A99 designation for the impacted area on the FIRM or DFIRM panels, the CEO, FPA, or other responsible official of a community who receives an adequate progress determination from FEMA must certify to the FEMA Regional

Office *annually*, on the anniversary date of receipt of the adequate progress determination, that no present delay in completion of the project is attributable to local sponsors of the project, and that a good faith effort to complete the project is being made.

8.7 Flood Insurance Requirements in Zone A99

The following flood insurance requirements apply in areas designated Zone A99 on an effective FIRM or DFIRM:

- The mandatory flood insurance purchase requirements of the NFIP apply.
- Properties located in Zone A99 will be charged the same flood insurance premium rates that would be applicable to insurable structures once the project is complete (i.e., rates applicable to low- or moderate-risk areas labeled Zone X or Zone X shaded).
- The flood insurance premium rates go into effect on the date that FEMA issues its final determination to the community CEO and others, in writing, that adequate progress has been made toward completion of the flood protection system.

8.8 Floodplain Management and Building Requirements in Zone A99

The following floodplain management and building requirements apply in areas designated Zone A99 on an effective FIRM or DFIRM:

- Residential buildings do not have to be elevated to or above the elevation of the 1- percent-annual-chance flood (i.e., the Base Flood Elevation).
- Nonresidential buildings do not have to be elevated or floodproofed to or above the 1-percent-annual-chance flood elevation.
- Unlike the requirements in other SFHAs that are determined based on detailed engineering studies, the community only needs to meet the standards of Subparagraphs 60.3(a)(1) through (5) and Subparagraphs 60.3(b)(5) through (9) for Zone A99 areas.

8.9 Requirements for Removing Zone A99 Designation

A community that has received an adequate progress determination from FEMA must notify the FEMA Regional Office that serves the community if, at any time, all progress on the completion of the project has been halted or if the project has been canceled. When this occurs, FEMA will notify all affected communities in writing and will revise the FIRM or

DFIRM to present flood hazard and risk information based on the levee system **not** providing 1-percent-annual-chance flood protection.

In this case, FEMA would redesignate the levee-impacted area as Zone A or Zone AE, depending on the type of engineering study that had been performed for the flooding source, and the flood insurance and floodplain management benefits that apply to Zone A99 areas discussed above would no longer apply.

A community that has completed a project as planned must provide the data and documentation cited in the criteria in Section 65.10 of the NFIP regulations to FEMA for the levee system to be accredited on an updated FIRM/DFIRM. Once FEMA receives and reviews the required data and documentation, FEMA will redesignate the levee-impacted area as shaded Zone X, except for internal drainage areas, to indicate the residual flood hazard of the completed project.