



FEMA

October 30, 2013

Operating Guidance No. 14-13

For use by FEMA staff and Flood Hazard Mapping Partners

Title: Operating Guidance for Processing Appeals and Revisions to the Limit of Moderate Wave Action (LiMWA) on Regulatory NFIP Products

Effective Date: October 30, 2013

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Operating guidance documents provide best practices for the Federal Emergency Management Agency's (FEMA's) Risk MAP program. These guidance documents are intended to support current FEMA standards and facilitate effective and efficient implementation of these standards. However, nothing in Operating Guidance is mandatory, other than program standards that are defined elsewhere and reiterated in the operating guidance document. Alternate approaches that comply with program standards that effectively and efficiently support program objectives are also acceptable.

Background:

Post-storm investigations and laboratory tests have shown that typical AE Zone construction techniques (e.g., woodframe, light gauge steel, or masonry walls on shallow footings or slabs, etc.) are subject to damage when exposed to waves as small as 1.5-feet in height. In response, FEMA issued Procedure Memorandum No. 50 (PM 50), dated December 3, 2008, to set policy and procedure for identifying and mapping areas subject to wave height greater than 1.5 feet as an informational layer on Flood Insurance Rate Maps. The main purpose of PM 50 is to differentiate the AE Zone areas subject to wave height between 1.5 and 3 feet from other AE Zone areas, with lesser or no wave action, on FIRMs. This differentiation is achieved by identifying and mapping the Limit of Moderate Wave Action (LiMWA), or the inland limit of where waves greater than 1.5-feet are expected to occur during the Base Flood. PM 50 specifies that the LiMWA is an informational layer with no NFIP floodplain management requirements or

special insurance ratings but acknowledges that local building codes could require communities to enforce higher standards in these areas.

Issue:

Widely adopted building codes (including the International Residential Code and the International Building Code) require that structures built in the moderate wave action area (termed the Coastal A Zone and defined as the area between the VE Zone and the LiMWA) be designed and constructed to standards that exceed the NFIP minimum floodplain management requirements. Therefore, even though from the perspective of the NFIP the LiMWA does not have any regulatory requirements, for many communities it has regulatory requirements stemming from locally adopted codes and standards. As a result, States and communities may wish to provide FEMA with data to inform the identification and mapping of the LiMWA. Unfortunately, PM 50 does not specify the appropriate processes for making revisions to the LiMWA, either during production of an updated FIRM, during an appeal period, or after a FIRM has become effective.

Actions Taken:

This issue was discussed by the Engineering Management Branch and the Office of Chief Counsel (OCC). OCC noted that States and communities are free to adopt whatever building codes they wish and/or to revise any provisions found in standard codes before they adopt them. It was discussed and agreed that the land-use implications of the LiMWA are a result of State and local codes, not the NFIP. This is a distinct and important difference between the LiMWA and other flood hazard data shown on the FIRM. It was noted the same is true with respect to adverse impacts of mapping the LiMWA. Any adverse impacts to communities are due to State and local codes, not the NFIP.

It was discussed and agreed that since there are no land-use or insurance implications (other than potential premium discounts available via the CRS program for enforcing higher standards) under the NFIP of mapping the LiMWA that it is not appropriate to characterize the LiMWA as appealable under NFIP regulations. It was further discussed that since the LiMWA is so closely related to other appealable coastal flood hazard data (VE Zones, AE Zones, and BFEs) and identified using the same modeling, it is unlikely that data will be submitted that would revise the LiMWA without also revising other appealable data. So in many instances, LiMWA revisions will be included in the data submitted for appeal. However, it is important to clarify that the LiMWA revision itself is not considered an appeal and should be characterized as a comment.

It was further decided that since the LiMWA is not an appealable piece of flood hazard data, as per the previous discussion, and therefore due process under Part 67 of Title 44 of the Code of Federal Regulations is not necessary when identifying or revising the LiMWA, there are two

options for revising it once it is on an effective FIRM; Notice to Users (NTUs) and LOMRs (or PMRs as needed to incorporate large revisions). The basis for the request to revise the LiMWA and whether or not other appealable flood hazard data is included in the request will dictate what process is appropriate. While it was not discussed, it is assumed that LOMR requests that exceed size limitations would be converted and processed as PMRs as normal.

NTU revisions result in updated panels, NFHL, and database, but not a new effective date. Appeal periods are not provided for NTU revisions, so if due process is required a different revision process must be pursued. There are no size restrictions for NTU revisions and they are typically less expensive than other revision types. NTU revisions are typically used to fix errors that do not require due process, but not to incorporate new technical data.

It was discussed and decided that the NTU revision process is only appropriate to fix errors in the effective delineation of the LiMWA. If the basis for the LiMWA revision request is to incorporate new topographic data, land use, new modeling, or other technical data, then the LOMR process should be used. Additionally, if the revision request includes revisions to Zones and BFEs, or other appealable data, in addition to the LiMWA, then the entire revision should be processed as a LOMR/PMR. If appealable data is revised then due process/appeal period is necessary. If only the LiMWA is revised then an appeal period is not necessary.

In most cases, new technical data will result in changes to appealable data, in addition to the LiMWA. The submitted data in its entirety should be considered when selecting the appropriate process and making the revision. We should not process LiMWA-only revisions in order to avoid the appeals process when the submitted data shows revisions to appealable data as well. In general, the Regions should address issues with the LiMWA and revisions based on better data during the map production process and should not push these issues/revisions to be later addressed through the NTU or LOMR/PMR processes.

Based on the discussion summarized above, the guidance set forth in this memo is summarized as follows and should be utilized when processing requests for revisions to the LiMWA:

1. FEMA can revise the LiMWA based on better data received.
2. The LiMWA is not appealable.
3. Revisions to the LiMWA based on data received during the appeal period are characterized as comments.
4. Errors in how the LiMWA is depicted on the effective FIRM can be fixed via the NTU revision process.
5. Revisions to the LiMWA based on new scientific or technical data must be processed as a LOMR and escalated to a PMR as appropriate.

Supersedes/Amends:

This guidance amends *Procedure Memorandum No. 50 – Policy and Procedures for Identifying and Mapping Areas Subject to Wave Heights Greater than 1.5 feet as an Informational Layer on Flood Insurance Rate Maps (FIRMs)*, dated December 3, 2008

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