

## VI. Regulatory Impact Statement

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more annually). This is not a major rule. This final rule will have no substantial economic impact on either costs or savings to the Medicare or Medicaid programs.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million annually (see 65 FR 69432). Individuals and States are not included in the definition of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital located outside of a Metropolitan Statistical Area with fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant impact on a substantial number of small entities or rural hospitals because providers and suppliers will still have 15 to 27 months to file claims. Although some providers and suppliers may be small entities or rural hospitals, they are not filing a significant number of SOIs and the information required to file a valid SOI

is essentially the same information that providers and suppliers are required to provide when filing a valid claim. We are aware that some States rely on the SOI process at the end of the period for Medicare timely claims filing, to pay and recover expenditures for some of their claims that could have been paid by Medicare. Elimination of the SOI process will require that these States revert to the standard recovery process in the Medicaid regulations to assure that claims are filed within the Medicare timely filing requirements (15 to 27 months). While the elimination of the SOI process will not completely eliminate the issue of "pay and chase," we believe it will encourage States to pursue cost-avoidance procedures to ensure that Medicaid is truly the payer of last resort, reducing the need to use "pay and chase" procedures.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. This rule would not have such an effect on State, local, or tribal governments, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a final rule that would impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

While this rule will not have a substantial effect on State and local governments, States need to preserve their ability to appropriately recover expenditures for Medicaid benefits that should have been paid by Medicare. We are aware that some States rely on the SOI process, at the end of the period for Medicare timely claims filing, to recover expenditures for some of their claims that could have been paid by Medicare. Elimination of the SOI process will require that these States revert to the standard recovery process in the Medicaid regulations to assure that claims are filed within the Medicare timely filing requirements (15 to 27 months).

For the reasons discussed earlier in this regulation, we believe this timeframe is adequate to address the States' need for recovering claims from Medicare. We will continue to address the States' concerns on these payment and recoupment issues, through the efforts of the State Technical Advisory Group on Third Party Liability, and will continue to consult with States about issues affecting their ability to recover

expenditures for some of their claims that should have been covered by Medicare.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

### List of Subjects in 42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

■ For reasons set forth in the Preamble, the Centers for Medicare and Medicaid Services is amending 42 CFR chapter IV as set forth below.

### PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 1. The authority citation for part 424 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

#### § 424.45 [Removed]

■ 2. Section 424.45 is removed.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 10, 2003.

**Thomas A. Scully,**  
*Administrator, Centers for Medicare & Medicaid Services.*

Approved: January 21, 2004.

**Tommy G. Thompson,**  
*Secretary.*

[FR Doc. 04-9316 Filed 4-22-04; 8:45 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 65

[Docket No. FEMA-D-7555]

### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the Base (1% annual chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be

calculated from the modified BFEs for new buildings and their contents.

**DATES:** These modified BFEs are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646-2903.

**SUPPLEMENTARY INFORMATION:** The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105,

and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

**National Environmental Policy Act.** This 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 Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood

Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification.** This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

**Executive Order 12778, Civil Justice Reform.** This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

#### List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

#### PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

#### § 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as shown below:

State and county	Location	Dates and name of newspaper where notice was published	Chief Executive officer of community	Effective date of modification	Community number
Connecticut: New London.	City of Norwich .....	October 10, 2003, October 17, 2003, <i>The Day</i> .	The Honorable Arthur L. Lathrop, Mayor of the City of Norwich, Norwich City Hall 100 Broadway, 3rd Floor, Norwich, Connecticut 06360.	January 16, 2004 .....	090102 F
Delaware: New Castle ..	Unincorporated Areas	February 17, 2004, February 24, 2004, <i>The News Journal</i> .	Mr. Thomas P. Gordon, New Castle County Executive, New Castle County Government Center 87 Reads Way, New Castle, Delaware 19720.	May 25, 2004 .....	105085 G

State and county	Location	Dates and name of newspaper where notice was published	Chief Executive officer of community	Effective date of modification	Community number
Georgia: Catoosa .....	Unincorporated Areas	October 29, 2003, November 5, 2003, <i>The Catoosa County News</i> .	Mr. Winford Long, Chairman of the Catoosa County, Board of Commissioners, Catoosa County Courthouse 7694 Nashville Street Ringgold, Georgia 30736.	February 4, 2004 .....	130028 D
Georgia: Forsyth .....	Unincorporated Areas	October 29, 2003, November 5, 2003, <i>Forsyth County News</i> .	Mr. Stevie Mills, Forsyth County Manager, 110 East Main Street, Suite 210, Cumming, Georgia 30040.	February 4, 2004 .....	130312 C
Georgia: Catoosa and Walker.	Fort Oglethorpe .....	October 29, 2003, November 5, 2003, <i>The Catoosa County News</i> .	The Honorable Judson L. Burkhart, Mayor of the City of Fort Oglethorpe, P.O. Box 5509, 500 City Hall Drive, Fort Oglethorpe, Georgia 30742.	February 4, 2004 .....	130248 B
New Jersey: Cape May	Borough of Wildwood Crest.	February 11, 2004, February 18, 2004, <i>The Gazette</i> .	The Honorable John J. Pantalone, Mayor of the Borough of Wildwood Crest, 6101 Pacific Avenue, Wildwood Crest, New Jersey 08260.	February 3, 2004 .....	345330 C
Puerto Rico: .....	Commonwealth .....	March 5, 2004, March 12, 2004, <i>The San Juan Star</i> .	The Honorable Sila M. Calderon, Governor of the Commonwealth of Puerto Rico, Office of the Governor, P.O. Box 9020082, San Juan, Puerto Rico 00902-0082.	June 11, 2004 .....	720000 C
Vermont: Bennington ....	Town of Bennington ....	February 18, 2004, February 25, 2004, <i>Bennington Banner</i> .	Mr. Stuart Hurd, Bennington Town Manager, P.O. Box 469, 205 South Street, Bennington, Vermont 05201.	February 11, 2004 .....	500013 C
Virginia: Culpeper .....	Town of Culpeper .....	February 17, 2004, February 24, 2004, <i>The Culpeper Star Exponent</i> .	Mr. J. Brannon Godfrey, Town of Culpeper Manager, 400 South Main Street, Culpeper, Virginia 22701.	May 25, 2004 .....	510042 B
Virginia: Fairfax .....	Unincorporated Areas	February 18, 2004, February 25, 2004, <i>The Washington Times</i> .	Mr. Anthony Griffin, Fairfax County Executive, 12000 Government Center Parkway, Suite 552, Fairfax, Virginia 22035-0066.	May 26, 2004 .....	515525 D

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: April 7, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04-9214 Filed 4-22-04; 8:45 am]

BILLING CODE 9110-12-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 65

#### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** Modified Base (1% annual chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

**EFFECTIVE DATES:** The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646-2903.

**SUPPLEMENTARY INFORMATION:** FEMA makes the final determinations listed below of modified BFEs for each

community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

**National Environmental Policy Act.** This 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 Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification.** This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

**Executive Order 12778, Civil Justice Reform.** This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

#### List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

#### PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

#### § 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of Modification	Community number
Alabama: Tuscaloosa (FEMA Docket No. D-7547).	City of Northport .....	September 19, 2003, September 26, 2003, <i>The Tuscaloosa News</i> .	The Honorable Harvey Fretwell, Mayor of the City of Northport, P.O. Box 569, Northport, Alabama 35476.	December 26, 2003 ....	010202 E