

Management Agency to comply with any purchase or loan commitment entered into before the expiration of the 1-year period beginning on Sept. 23, 1994, pursuant to authority under this section or section 551(b) of Pub. L. 103-325.

TRANSITION PHASE

Pub. L. 103-325, title V, §551(b), Sept. 23, 1994, 108 Stat. 2269, permitted the Director of the Federal Emergency Management Agency to enter into loan and purchase commitments as provided under this section (as in effect immediately before the enactment of Pub. L. 103-325) during the 1-year period beginning on Sept. 23, 1994.

§ 4104. Flood elevation determinations

(a) Publication or notification of proposed flood elevation determinations

In establishing projected flood elevations and designating areas having special flood hazards for land use purposes with respect to any community pursuant to section 4102 of this title, the Administrator shall first propose such determinations and designations by publication for comment in the Federal Register, by direct notification to the chief executive officer of the community, and by publication in a prominent local newspaper.

(b) Publication of flood elevation determinations; appeal of owner or lessee to local government; scientific or technical knowledge or information as basis for appeal; modification of proposed determinations

The Administrator shall publish notification of flood elevation determinations and designations of areas having special flood hazards in a prominent local newspaper at least twice during the ten-day period following notification to the local government. During the ninety-day period following the second publication, any owner or lessee of real property within the community who believes his property rights to be adversely affected by the Administrator's proposed determination may appeal such determination to the local government. The sole grounds for appeal shall be the possession of knowledge or information indicating that (1) the elevations being proposed by the Administrator with respect to an identified area having special flood hazards are scientifically or technically incorrect, or (2) the designation of an identified special flood hazard area is scientifically or technically incorrect.

(c) Appeals by private persons; submission of negating or contradicting data to community; opinion of community respecting justification for appeal by community; transmission of individual appeals to Administrator; filing of community action with Administrator

Appeals by private persons shall be made to the chief executive officer of the community, or to such agency as he shall publicly designate, and shall set forth the data that tend to negate or contradict the Administrator's finding in such form as the chief executive officer may specify. The community shall review and consolidate all such appeals and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name.

Whether or not the community decides to appeal the Administrator's determination, copies of individual appeals shall be sent to the Administrator as they are received by the community, and the community's appeal or a copy of its decision not to appeal shall be filed with the Administrator not later than ninety days after the date of the second newspaper publication of the Administrator's notification.

(d) Administrative review of appeals by private persons; modification of proposed determinations; decision of Administrator: form and distribution

In the event the Administrator does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits, in accordance with the procedures set forth in subsection (e), the appeals filed within the community by private persons and shall make such modifications of his proposed determinations as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals. The Administrator's decision shall be in written form, and copies thereof shall be sent both to the chief executive officer of the community and to each individual appellant.

(e) Administrative review of appeals by community; agencies for resolution of conflicting data; availability of flood insurance pending such resolution; time for determination of Administrator; community adoption of local land use and control measures within reasonable time of final determination; public inspection and admissibility in evidence of reports and other administrative information

Upon appeal by any community, as provided by this section, the Administrator shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his proposed determination is based. The Administrator shall resolve such appeal by consultation with officials of the local government involved, by administrative hearing, or by submission of the conflicting data to the Scientific Resolution Panel provided for in section 4104-1 of this title. Until the conflict in data is resolved, and the Administrator makes a final determination on the basis of his findings in the Federal Register, and so notifies the governing body of the community, flood insurance previously available within the community shall continue to be available, and no person shall be denied the right to purchase such insurance at chargeable rates. The Administrator shall make his determination within a reasonable time. The community shall be given a reasonable time after the Administrator's final determination in which to adopt local land use and control measures consistent with the Administrator's determination. The reports and other information used by the Administrator in making his final determination shall be made available for public inspection and shall be admissible in a court of law in the event the community seeks judicial review as provided by this section.

(f) Reimbursement of certain expenses

When, incident to any appeal under subsection (b) or (c) of this section, the owner or lessee of real property or the community, as the case may be, or, in the case of an appeal that is resolved by submission of conflicting data to the Scientific Resolution Panel provided for in section 4104-1 of this title, the community, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal based on a scientific or technical error on the part of the Federal Emergency Management Agency, which is successful in whole or part, the Administrator shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Administrator in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. The Administrator may use such amounts from the National Flood Insurance Fund established under section 4017 of this title as may be necessary to carry out this subsection. The Administrator shall promulgate regulations to carry out this subsection.

(g) Judicial review of final administrative determinations; venue; time for appeal; scope of review; good cause for stay of final determinations

Except as provided in section 4104-1 of this title, any appellant aggrieved by any final determination of the Administrator upon administrative appeal, as provided by this section, may appeal such determination to the United States district court for the district within which the community is located not more than sixty days after receipt of notice of such determination. The scope of review by the court shall be as provided by chapter 7 of title 5. During the pendency of any such litigation, all final determinations of the Administrator shall be effective for the purposes of this chapter unless stayed by the court for good cause shown.

(Pub. L. 90-448, title XIII, §1363, as added Pub. L. 93-234, title I, §110, Dec. 31, 1973, 87 Stat. 980; amended Pub. L. 95-128, title VII, §704(c), Oct. 12, 1977, 91 Stat. 1146; Pub. L. 98-181, title I [title IV, §451(d)(1)], Nov. 30, 1983, 97 Stat. 1229; Pub. L. 112-141, div. F, title II, §§100217, 100218(b), 100238(b)(1), (2), 100246, July 6, 2012, 126 Stat. 930, 932, 958, 967; Pub. L. 113-89, §18(a), Mar. 21, 2014, 128 Stat. 1027.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (g), was in the original a reference to "this title" meaning title XIII of Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

2014—Subsec. (f). Pub. L. 113-89 inserted "or, in the case of an appeal that is resolved by submission of con-

flicting data to the Scientific Resolution Panel provided for in section 4104-1 of this title, the community," after "as the case may be," and substituted "The Administrator may use such amounts from the National Flood Insurance Fund established under section 4017 of this title as may be necessary to carry out this subsection." for "The amounts available for implementing this subsection shall not exceed \$250,000."

2012—Subsec. (a). Pub. L. 112-141, §100238(b)(1), substituted "Administrator" for "Director".

Pub. L. 112-141, §100217(1), inserted "and designating areas having special flood hazards" after "flood elevations" and substituted "such determinations and designations" for "such determinations".

Subsec. (b). Pub. L. 112-141, §100238(b)(1), (2), substituted "Administrator" for "Director" in first sentence and "Administrator's" for "Director's" in second sentence.

Pub. L. 112-141, §100217(2), inserted "and designations of areas having special flood hazards" after "flood elevation determinations" and substituted "The sole grounds for appeal shall be the possession of knowledge or information indicating that (1) the elevations being proposed by the Administrator with respect to an identified area having special flood hazards are scientifically or technically incorrect, or (2) the designation of an identified special flood hazard area is scientifically or technically incorrect," for "The sole basis for such appeal shall be the possession of knowledge or information indicating that the elevations being proposed by the Director with respect to an identified area having special flood hazards are scientifically or technically incorrect, and the sole relief which shall be granted under the authority of this section in the event that such appeal is sustained in accordance with subsection (e) or (f) of this section is a modification of the Director's proposed determination accordingly."

Subsecs. (c), (d). Pub. L. 112-141, §100238(b)(1), (2), substituted "Administrator" for "Director" and "Administrators" for "Director's" wherever appearing.

Subsec. (e). Pub. L. 112-141, §100238(b)(1), (2), substituted "Administrator" for "Director" wherever appearing and "Administrator's" for "Director's" in two places.

Pub. L. 112-141, §100218(b)(1), substituted "the Scientific Resolution Panel provided for in section 4104-1 of this title" for "an independent scientific body or appropriate Federal agency for advice".

Subsec. (f). Pub. L. 112-141, §100246, added subpar. (f) and struck out former subpar. (f) which read as follows: "When, incident to any appeal under subsection (b) or (c) of this section, the owner or lessee of real property or the community, as the case may be, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal which is successful in whole or part, the Director shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Director in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. There is authorized to be appropriated for purposes of implementing this subsection, not to exceed \$250,000."

Subsec. (g). Pub. L. 112-141, §100238(b)(1), substituted "Administrator" for "Director" in two places.

Pub. L. 112-141, §100218(b)(2), substituted "Except as provided in section 4104-1 of this title, any appellant" for "Any appellant".

1983—Pub. L. 98-181 substituted "Director" for "Secretary" and "Director's" for "Secretary's" wherever appearing.

1977—Subsecs. (f), (g). Pub. L. 95-128 added subsec. (f) and redesignated former subsec. (f) as (g).

Statutory Notes and Related Subsidiaries

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of

the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4104-1. Scientific Resolution Panel

(a) Availability

(1) In general

Pursuant to the authority provided under section 4104(e) of this title, the Administrator shall make available an independent review panel, to be known as the Scientific Resolution Panel, to any community—

(A) that has—

(i) filed a timely map appeal in accordance with section 4104 of this title;

(ii) completed 60 days of consultation with the Federal Emergency Management Agency on the appeal; and

(iii) not allowed more than 120 days, or such longer period as may be provided by the Administrator by waiver, to pass since the end of the appeal period; or

(B) that has received an unsatisfactory ruling under the map revision process established pursuant to section 4101(f) of this title.

(2) Appeals by owners and lessees

If a community and an owner or lessee of real property within the community appeal a proposed determination of a flood elevation under section 4104(b) of this title, upon the request of the community—

(A) the owner or lessee shall submit scientific and technical data relating to the appeals to the Scientific Resolution Panel; and

(B) the Scientific Resolution Panel shall make a determination with respect to the appeals in accordance with subsection (c).

(3) Definition

For purposes of paragraph (1)(B), an “unsatisfactory ruling” means that a community—

(A) received a revised Flood Insurance Rate Map from the Federal Emergency Management Agency, via a Letter of Final Determination, after September 30, 2008, and prior to July 6, 2012;

(B) has subsequently applied for a Letter of Map Revision or Physical Map Revision with the Federal Emergency Management Agency; and

(C) has received an unfavorable ruling on their request for a map revision.

(b) Membership

The Scientific Resolution Panel made available under subsection (a) shall consist of 5 members with expertise that relates to the creation and study of flood hazard maps and flood insur-

ance. The Scientific Resolution Panel may include representatives from Federal agencies not involved in the mapping study in question and from other impartial experts. Employees of the Federal Emergency Management Agency may not serve on the Scientific Resolution Panel.

(c) Determination

(1) In general

Following deliberations, and not later than 90 days after its formation, the Scientific Resolution Panel shall issue a determination of resolution of the dispute. Such determination shall set forth recommendations for the base flood elevation determination or the designation of an area having special flood hazards that shall be reflected in the Flood Insurance Rate Maps.

(2) Basis

The determination of the Scientific Resolution Panel shall be based on—

(A) data previously provided to the Administrator by the community, and, in the case of a dispute submitted under subsection (a)(2), an owner or lessee of real property in the community; and

(B) data provided by the Administrator.

(3) No alternative determinations permissible

The Scientific Resolution Panel—

(A) shall provide a determination of resolution of a dispute that—

(i) is either in favor of the Administrator or in favor of the community on each distinct element of the dispute; or

(ii) in the case of a dispute submitted under subsection (a)(2), is in favor of the Administrator, in favor of the community, or in favor of the owner or lessee of real property in the community on each distinct element of the dispute; and

(B) may not offer as a resolution any other alternative determination.

(4) Effect of determination

(A) Binding

The recommendations of the Scientific Resolution Panel shall be binding on all appellants and not subject to further judicial review unless the Administrator determines that implementing the determination of the panel would—

(i) pose a significant threat due to failure to identify a substantial risk of special flood hazards; or

(ii) violate applicable law.

(B) Written justification not to enforce

If the Administrator elects not to implement the determination of the Scientific Resolution Panel pursuant to subparagraph (A), then not later than 60 days after the issuance of the determination, the Administrator shall issue a written justification explaining such election.

(C) Appeal of determination not to enforce

If the Administrator elects not to implement the determination of the Scientific Resolution Panel pursuant to subparagraph (A), the community may appeal the deter-