

RD AN No. 4562 (426.2/1806-B)
March 22, 2011

TO: National Office Program Officials, State Directors, Centralized Servicing Center

ATTN: Deputy Administrators, Assistant Administrators, Program Directors, Area Directors, Loan Specialists and State Environmental Coordinators

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SUBJECT: Rural Development Use of Federal Emergency Management Agency Form 81-93, “Standard Flood Hazard Determination” and Form 81-31, “Elevation Certificate”

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidance on the use of Federal Emergency Management Agency (FEMA) Form 81-93, “Standard Flood Hazard Determination Form (SFHDF)” and FEMA Form 81-31, “Elevation Certificate.” FEMA Form 81-93 is required by the National Flood Insurance Reform Act (NFIRA) of 1994. A contract for completion of this form has been issued for use in most program areas within Rural Development as explained within this AN. FEMA Form 81-31 is one form of proof which may be utilized to ensure compliance with the RD Instruction 426.2/1806-B requirement that the first floor habitable space must be located above the 100-year floodplain elevation.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 4424 (426.2/1806-B) dated April 2, 2009, which expired on April 30, 2010. Included is updated information on the FEMA flood insurance requirements, most

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March 31, 2012

FILING INSTRUCTIONS:
Preceding RD Instruction 426.2/1806-B

recent revisions to the FEMA Elevation Certificate, clarification of certain Rural Development definitions; Attachment A which explains FEMA's base flood elevation (BFE) determination methods in Zone A; and Attachment B which contains updated guidance in using Rural Development's contract to obtain contractor completed FEMA Form 81-93.

IMPLEMENTATION RESPONSIBILITIES:

The NFIRA impacts Rural Development's programs by requiring flood insurance whenever federal agency lender financing, including **direct** or **guaranteed loans**, is secured by a lien on improved real estate, where a building is or will be located, within the 100-year floodplain (or Special Flood Hazard Area (SFHA)).

Proposed construction or purchase of a "building" within a 100-year floodplain is ineligible by law for all Federal financial assistance unless flood insurance is available through the National Flood Insurance Program (NFIP) in that area. There is an exception for areas where no 100-year floodplain has been designated by FEMA.

FEMA issued "Mandatory Purchase of Flood Insurance Guidelines" in September 2007 that is available at <http://www.fema.gov/library/viewRecord.do?id=2954>.

Rural Development is required to use the current FEMA Form 81-93. RD Instruction 426.2/1806-B is being rewritten to reflect the requirements of NFIRA of 1994 and the 2004 amendments. The current Rural Development regulations are found in the agencies regulations website under 1806-B because the agency stopped using the 400 series.

FEMA Form 81-93 is required to determine if flood insurance will be required on a particular "building". FEMA's definition of a "building" is: a structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site; or a manufactured home (also known as a mobile home, which is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or a travel trailer without wheels, built on a chassis and affixed to a permanent foundation that is regulated under the community's floodplain management and building ordinances or laws. "Building" does not mean a gas or liquid storage tank or a recreational vehicle, parked trailer, or other similar vehicle, except as described above. Underground utility lines and underground pumping stations are not "buildings".

FEMA Form 81-93 is important in two ways: first, it provides specific information on a proposal's proximity to the 100-year floodplain (also called the Special Flood Hazard Area "SFHA"); and second, it certifies the availability of flood insurance for that area.

The mandatory purchase provisions of the NFIRA of 1994 direct federally regulated lenders and Federal agency lenders to not make, increase, renew, or extend any loan on applicable property unless flood insurance is purchased and maintained to protect that property securing loans in a SFHA. The statutory requirements apply when improved real property (e.g., a building) or manufactured (mobile) home is taken as security for financing.

Rural Development Contract Use for obtaining a SFHDF:

- **For all direct loans (except Rural Utilities Service):** Rural Development staff will use the existing contract for obtaining a FEMA Form 81-93 for all direct loans without any additional charge to the applicant if the financial assistance involves funding acquisitions or construction in a 100-year floodplain or when a building is being taken as real estate security. Please refer to the “Use of Contract” Section below for instructions on how to utilize the contract. For loans to an intermediary, the intermediary is expected to complete and sign a FEMA Form 81-93 when that intermediary makes a loan to a third party using Rural Development funds. The contract should not be used for intermediary relending loans unless Rural Development staff desire to spot check the accuracy of the FEMA Form 81-93 provided by intermediaries when a clear determination cannot be made by a review of the FEMA map.
- **For all Rural Utilities Service (RUS) direct and guaranteed loans:** Under RUS’ 7 C.F.R. 1794, Environmental Policies and Procedures, the applicant’s consultant is responsible for completing the FEMA Form 81-93.
- **For all guaranteed loans:** Guaranteed lenders must submit a completed FEMA Form 81-93 to Rural Development as part of all requests for guaranteed financial assistance, if the financial assistance involves funding acquisitions or construction in a 100-year floodplain or when a building is being taken as real estate security. The use of the FEMA Form 81-93 was mandated for all federally regulated lending institutions (such as most banks and commercial lenders) effective January 2, 1996, so this is not an additional burden for guaranteed lenders because they would be required to do so even without Rural Development’s involvement. Rural Development’s contract must not be used for guaranteed loans except to spot check accuracy of the FEMA Form 81-93 provided by guaranteed lenders.

Exceptions to FEMA’s Flood Insurance Requirement: The following are some examples where flood insurance and therefore a FEMA Form 81-93 are not required:

- **Grants.** All grants are excluded from the mandatory purchase requirement according to the provisions of the NFIRA of 1994.
- **Land Only.** The National Flood Insurance Program does not insure land and the law does not address mortgages secured by land alone (without buildings);
- **Inventory.** Flood insurance is not required for a loan financing inventory where the secured collateral is stored in a building located in a 100-year floodplain and the building is not security for the loan; flood insurance for personal property is not required by law for residential loans in the SFHA, flood insurance for personal property or inventory for commercial loans in the SFHA is not required by law unless the personal property/inventory, in addition to a building, secures the loan.

- Small loans. If the original outstanding principal balance is \$5,000 or less with a repayment term of 1 year or less, the SFHDF and flood insurance is not required. The dual criteria must be met in order for this exemption to apply; and
- Federal/State Owned Property. If the security property is Federal or State-owned property and covered by adequate policies of self-insurance (refer to the list at 44 CFR, Chapter 1, Part 75), flood insurance is not required. This does not apply to county- or city-owned property.

Copies of the Form: If needed, “FEMA: Standard Flood Hazard Determination Form and Instructions” may be downloaded at <http://www.fema.gov/business/nfip/sfhdform.shtm>. The most recent edition of the form must be used. A copy of the FEMA Form 81-93 must be retained in each borrower’s file for the life of the loan. Signatures are to be provided in Section F of the form when completed by Rural Development staff. When the form is completed by an intermediary, guaranteed lending institution, or contracting firm, then, just the name, not signatures, are required in Section F.

Use of Contract: In order to utilize Rural Development’s contract for obtaining a FEMA Form 81-93 for all direct loans, refer to Attachment 2 entitled “Contractor Support for Flood Zone Determinations in Loan Originations.”

FEMA Form 81-31, “Elevation Certificate:” Rural Development may utilize FEMA’s Elevation Certificate (EC) in order to verify that first floor habitable space of structures are located above the BFE. Please note, however, that although FEMA requires an EC for determination of the flood insurance rate, Rural Development regulation does not require the completion of an EC to meet the requirements of RD Instruction 426.2/1806-B. Rural Development may utilize any of the following methods to document that the first floor elevation of habitable space is located above the BFE for single and multi-family housing including:

- A FEMA Form 81-31, “Elevation Certificate”
- Written confirmation from the NFIP municipality’s Community Floodplain Manager that the first floor elevation of habitable space is located above the BFE.
- A calculated BFE using FEMA’s Methodology documented in “*Managing Floodplain Development in Approximate Zone A Areas - A Guide for obtaining and developing Base (100-year) Flood Elevations (April 1995)*” for use in Zones A or AO only (see Attachment 1). This BFE calculation may be completed by Rural Development, the applicant, or the applicant’s consultant. Rural Development must verify the accuracy of all calculated BFEs which are not performed by a registered surveyor/engineer.
- Other forms of acceptable documentation confirming that the elevation of first floor habitable space is located above the BFE. This may include previous building or land surveys completed in the area or of the house.

As of April 1, 2010, FEMA began requiring the new EC form (FEMA 81-31 Mar 09) that must be used in order to certify new construction building elevations to comply with NFIP community

floodplain management ordinances, determine insurance premiums, etc. The new EC can be found at the following FEMA website: <http://www.fema.gov/business/nfip/forms.shtm>.

This FEMA webpage also contains a listing of the elements that have changed in the EC form. The EC form was revised in order to capture more exact information on building elements for flood insurance rating purposes. Determinations with crawl spaces/enclosures/garages have changed with respect to flood openings, so be sure to read those sections carefully.

In addition, a useful reference for identifying the lowest floor for rating buildings for NFIP coverage is the FEMA's Lowest Floor Guide, located at this FEMA website link: <http://www.fema.gov/pdf/nfip/manual200910/07lfg.pdf>.

Does First Floor Habitable Space include Basements? Yes, in some cases. RD Instruction 426.2/1806-B states that for existing dwellings, new construction and substantial improvements, the finished floor level of all habitable space, including basements, must be above the 100-year flood elevation. "Habitable space" was a term formerly used by FEMA to designate the lowest floor for flood insurance purposes, however, FEMA now utilizes "lowest floor" for flood insurance rating. Until Rural Development publishes a revised flood insurance regulation the existing term "habitable space" will be utilized for determinations of first floor habitable space with the below distinction for basements.

FEMA's former definition of "habitable space" was an "area in a building that is used as living space, or could reasonably be converted to living space." Rural Development utilizes the International Residential Code (IRC) for one and two family dwellings in order to determine if basements meet the definition of habitable space. If a basement has at least one window or door to provide daylight and at least one openable window or door to provide an escape or rescue opening, that basement meets the definition of habitable space for Rural Development purpose. Windows must have minimum dimensions of 24 inches high and 20 inches wide, located within 44 inches above the floor and exit at grade to meet the requirements for an escape opening. Windows must have aggregate glazing area (glass/material that will allow light to pass) of not less than 8 percent of the floor area of the room. Doors may be interior or exterior. If doors are interior they must lead directly to another exterior door/window (i.e.: they cannot lead to another interior door).

You are encouraged to work closely with the State Environmental Coordinator and guaranteed lenders to ensure flood insurance policies and procedures are effectively integrated with loan processing and servicing activities. If you have questions about this AN or other flood insurance issues, please call Juliet Bochicchio at (202) 205-8242, or Rich Fristik at (202) 720-5093.

Attachment 1: FEMA's Base Flood Elevation (BFE) Determination Method

Attachment 2: Contractor Support for Flood Zone Determinations in Loan Originations

FEMA Zone A Base Flood Elevation (BFE) Determination Method

The purpose of this attachment is to present FEMA's approved methods for determination of Base (100-year) Flood Elevations (BFEs) in Special Flood Hazard Areas (SFHA) designated as Zone A where no BFE is provided on the Flood Insurance Rate Maps (FIRM), to make lowest floor elevation determinations of structures for insurance rating purposes. FEMA developed this 151-page document for use by community officials, property owners, developers, surveyors, and engineers to provide engineering guidelines for determining BFEs in SFHA that were studied by approximate methods only.

FEMA's BFE determination guidance document, "Managing Floodplain Development in Approximate Zone A Areas - A Guide for obtaining and developing Base (100-year) Flood Elevations (April 1995)" is located at the following link:

<http://www.fema.gov/library/viewRecord.do;jsessionid=8C24B7A992BE0AC169AA9F5E16F91935.WorkerLibrary?action=back&id=1526>.

RD Instruction 426.2/1806-B states that financial assistance may be provided for **residential buildings** (existing or new construction) located within SFHA only if the first floor elevation of habitable space is above the 100-year flood zone elevation (or BFE). RD Instruction 426.2/1806-B states that financial assistance may be provided for **non-residential buildings** (existing or new construction) located within SFHA as long as construction plans and specifications for new buildings and improvements to existing buildings comply with floodplain area management or control laws, regulations, or ordinances.

FEMA FIRM map Zone A (and Zone AO) designated areas do not have BFEs. Therefore, FEMA has developed BFE determination methods which may be utilized in order to determine BFEs in these designated areas. Therefore, this methodology may be used in Zone A and Zone AO areas in order to determine BFE's to meet the RD Instruction 426.2/1806-B requirements for elevation purposes or flood-proofing requirements as stated in these regulations. The following is a summary of the FEMA Zone A BFE determination method, for use when there are no FEMA BFE's to base first floor elevations above.

Please note, if this method is utilized, FEMA's BFE determination guidance document located at the link above must be read in its entirety as the below information is a summary for informational purposes only. FEMA's 151-page BFE determination guidance document provides a more detailed explanation of these methods and states exceptions, requirements, and guidance that must be followed when using this methodology. For example, this guidance document is intended for use in riverine and lake areas where flow conditions are fairly uniform, and do not involve unusual flow regimes (rapidly varying flow, two-dimensional flow, supercritical flow, hydraulic jumps, etc.). It cannot be used in high velocity Zone V areas, or other zones which have storm surge (coastal) or alluvial fans. Additional exceptions are listed in the guidance document. The guidance document advises that prior to initiating this methodology for BFE determination, the applicant is to first check with the local and state government agencies, FEMA regional office, NRCS, USGS, USACE, DOT, USFWS etc. to see if any local

floodplain surveys have been completed which could provide accurate BFEs. Lastly, communities have the discretion to determine whether the simplified or detailed method is to be used for development within their jurisdiction.

According to the guidance document, if an area is mapped in Zone A, there are two general method types for obtaining BFEs, the simplified method and the detailed method.

1) Simplified Method - Contour Interpolation or Data Extrapolation- To qualify for the simplified method a project/proposal must be less than 5 acres in size and less than 50 lots. The simplified method may not be used by the community to complete an Elevation Certificate (EC) used for flood insurance rating.

- a) **Contour Interpolation** - This method entails superimposing approximate Zone A boundaries onto a topographic map to estimate BFE. This method is only as accurate as **one-half of the contour interval** of the topographic map used. In order to use this method: **1) the floodplain boundary must generally conform to the contour lines along the flooding source in question and 2) The difference between the water-surface elevations determined on the right overbank and the left overbank (for riverine flooding) or highest and lowest (for lacustrine flooding) water surface elevations must be within one-half of the map contour interval** (i.e. 2.5 feet for 5-foot contour, 0.5 foot for 1-foot contour) otherwise this method is not acceptable. Determine the BFE according to the guidelines. Determine ground elevation on each side of the stream in the vicinity of the site, at which the superimposed Zone A boundary lies by interpolating between two contour lines. Add one-half of the map contour interval to the lower of the two interpolated elevations to get the approximate BFE for the site. **Please refer to the detailed guidance document (link on first page) to use the contour interpolation method.** The costs for this method may range between \$100 and \$1,000 depending on location and specifics of the project.
- b) **Data Extrapolation** - This method can only be used if a hydrologic and hydraulic analysis is available with detailed BFE's based on 100-year flood profile and located within 500-feet upstream of your site with similar and available topography with no structures with backwater effects. **Please refer to the detailed guidance document (link on first page) to use this data extrapolation method.**

2) Detailed Method – The detailed method consists of FEMA’s approved guidelines for professional surveyors or engineers to calculate BFEs based on detailed topographic, hydrologic and hydraulic analyses. The costs of detailed method analyses are typically from \$2,000 to \$4,000. BFE determinations used to revise or amend NFIP maps, via Letters of Map Amendment (LOMA) or Letters of Map Revisions (LOMR), must utilize the detailed method.

You are encouraged to consult with your State Environmental Coordinator with questions or comments on the use of this guidance. Or feel free to contact Juliet Bochicchio at (202) 205-8242 or Rich Fristik at (202) 720-5093 with additional questions or comments.

Contractor Support for Flood Zone Determinations in Loan Originations

On September 8, 2008, Rural Development began using contractor-supported flood zone determinations for loan originations in housing, business and community facilities programs.

This flood zone certification process involves, in most cases, a relatively simple screening of a property site address against electronic FEMA Floodplain map data. If required, a closer, more detailed determination is made by the contractor to resolve any uncertainty that a proposed site may represent. All flood zone determinations made, utilizing this service, are guaranteed by the contractor to be correct. Any loss attributable to an error in a certification is the responsibility of the contractor.

Field staff should follow the guidance below in registering and utilizing the service. Any questions concerning this service should be directed to Toni Carter, Escrow and Front End Management Branch, CSC, at toni.carter@stl.usda.gov or (314) 457-5864.

Guidance to Users

The flood zone certifications are essentially self-service for authorized Rural Development users. Initial and new users of the service will need to register at Rural Development's SharePoint site to establish access to the contractor's web-based system. A registration area has been established on the CSC's SharePoint web site at:
<https://rd.sc.egov.usda.gov/teamrd/hcfp/csc/default.aspx>.

On the left side of the screen, under "Surveys", click on the "Flood Zone Certification Service User Registration Questionnaire", then to the right of that, click on "Respond to this Survey." You should receive an email with a login account and password within 48 to 72 hours with directions on how to access the site. To help us ensure that you are receiving timely service, please revisit the SharePoint survey and indicate "Yes" to the question "Have you received your login and password?" after you receive your email acknowledgement.

To begin, please enter your user ID and password provided by email. Upon verification of your account, the contractor's flood servicing portal will appear. Fill out all information as accurately and completely as possible. When complete, hit the submit button. You will either receive a certificate immediately, which will indicate the flood zone or you will receive the certificate by email within 24 to 48 hours, if additional processing time is required. **It is essential that the certificate is ordered with accurate information; otherwise the vendor will not assume liability for the error.**

If for some reason the property does not go to closing and a loan is not executed, Rural Development must pay the cost of the certificate. The cost of such certificates will be charged back to the individual program areas of the States requesting them. Therefore, it is essential that this service is used only for the express purpose intended.