§ 4104. Flood elevation determinations

(a) Publication or notification of proposed flood elevation determinations

In establishing projected flood elevations for land use purposes with respect to any community pursuant to section 4102 of this title, the Director shall first propose such determinations 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 Director shall publish notification of flood elevation determinations 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 Director’s proposed determination may appeal such determination to the local government. 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.

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

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 Director’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 Director’s determination, copies of individual appeals shall be sent to the Director 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 Director not later than ninety days after the date of the second newspaper publication of the Director’s notification.

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

In the event the Director 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) of this section, 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 Director’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 Director; 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 Director 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 Director shall resolve such
appeal by consultation with officials of the local government involved, by administrative hearing, or
by submission of the conflicting data to an independent scientific body or appropriate Federal agency
for advice. Until the conflict in data is resolved, and the Director 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 Director shall make his
determination within a reasonable time. The community shall be given a reasonable time after the
Director’s final determination in which to adopt local land use and control measures consistent with the
Director’s determination. The reports and other information used by the Director 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; appropriation authorization

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.

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

Any appellant aggrieved by any final determination of the Director 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 Director shall be effective for the
purposes of this chapter unless stayed by the court for good cause shown.


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

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).
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.