



Federal Emergency Management Agency

Washington, D.C. 20472

RECEIVED

JUL 13 2009

CITY OF CHESTERFIELD
DEPT. OF PLANNING & PUBLIC WORKS

July 10, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN REPLY REFER TO:
101/155

The Honorable John Nations
Mayor, City of Chesterfield
690 Chesterfield Pkwy West
Chesterfield, Missouri 63017

Community: City of Chesterfield, Missouri
Community No.: 290896

Dear Mayor Nations:

On May 29, 2009, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) provided your community with Preliminary copies of the revised Flood Insurance Study (FIS) report and Flood Insurance Rate Map (FIRM). This information makes it appropriate to modify the elevations of the flood having 1-percent chance of being equaled or exceeded in any given year (base flood) for certain locations in the City of Chesterfield, St. Louis County, Missouri. Public notification by way of a Standard Newspaper Notice that the proposed modifications in Base Flood Elevations (BFEs) are posted in the BFE Notice for Studies on the FEMA Website https://www.floodmaps.fema.gov/fhm/Scripts/bfe_main.asp will be given in the *St. Louis Post-Dispatch* on or about July 15, 2009 and July 22, 2009. The BFEs for the flooding sources are listed in the table at the end of the BFE Notice for Studies. Also, the proposed BFE determinations can be obtained by calling the FEMA Map Assistance Center toll free at 1-877-FEMA MAP (1-877-336-2627). A copy of the Standard Newspaper Notice and a copy of the Notice of Proposed Flood Elevation Determinations published in the *Federal Register*, on July 8, 2009 at Volume 74, Number 129, Pages 32487 to 32489 are enclosed for your information.

These proposed BFEs, if finalized, will become the basis for the floodplain management measures that your community must adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). However, before any revised BFEs are effective for floodplain management purposes, you will be provided an opportunity to appeal the proposed BFEs.

Section 110 of the Flood Disaster Protection Act of 1973 (Public Law 93-234) is intended to ensure an equitable balancing of all interests involved in the setting of BFE determinations. The legislation provides for an explicit process of notification and appeals for your community and for private persons prior to this office making the BFE determinations final. The appeal procedure is outlined below for your information. The regulations FEMA developed to implement Section 110 are listed in Title 44, Chapter I, Part 67, Code of Federal Regulations. A copy of the NFIP regulations is enclosed.

During the 90-day appeal period following the second publication in the referenced newspaper, any owner or lessee of real property in your community who believes his or her property rights will be adversely affected by the BFE determinations may appeal to you, or to an agency that you publicly designate. You must send copies of the individual appeals to the FEMA Region as soon as you receive them. Note that the 90-day appeal period is statutory and cannot be extended or shortened for any reason. It is important to know, however, that the sole basis for the appeals is having knowledge or information indicating that the proposed BFE determinations are scientifically or technically incorrect. However, inquiries regarding data other than the proposed BFE determinations (e.g., incorrect street names, typographical errors, omissions) will be considered as comments and not appeals. Any applicable changes will be made before the revised FIS report and FIRM become effective.

During the appeal period, private citizens who want to appeal should present to you the scientific or technical data intended to negate or contradict FEMA's findings in any form, as you specify. FEMA requests that you review and consolidate all appeals by private persons, and issue a written opinion stating whether the evidence presented is sufficient to justify an official appeal by your community on behalf of such persons. Your decision on whether an appeal by the community in its own name will be made must be sent to this office within the 90-day appeal period and at the same time a copy must be sent to

Melissa Janssen, Chief
Risk Analysis Branch
FEMA Region VII
9221 Ward Parkway, Suite 300
Kansas City, Missouri

and

Tadd Henson, PE, CFM
Project Manager
Stantec Consulting Services Inc.
1500 Lake Shore Drive, Suite 100
Columbus, Ohio 43204

Any documents submitted to you without evidence that they were sent within 90 days of the second publication in the local newspaper will be considered comments. Your community may find it appropriate to call further attention to the proposed BFE determinations and to the appeal procedure by using a press release or other public notice.

If the FEMA Region does not receive an appeal from your community on behalf of individuals within the 90 days provided, FEMA shall consolidate and review on their own merits the individual appeals, which you have on file and forwarded to us. FEMA's final decision will be in writing, and copies will be sent to each individual appellant and the State coordinating agency.

The appeal resolution process will consider any scientific or technical data submitted by your community intended to negate or contradict the information upon which the proposed BFE determinations are based. The appeal will be resolved by consultation with officials of the local government involved, an administrative hearing, or submission of the conflicting data to an independent scientific body or appropriate Federal agency for a determination. FEMA will determine the method for resolution.

If your community cannot submit scientific or technical data before the end of the 90-day appeal period, you may nevertheless submit data at any time as specified in Part 65 of the NFIP Regulations. If warranted, FEMA will revise the FIRM again after the effective date.

The reports and other information used for the final determination will be made available for public inspection. Until the conflict of data is resolved and the revised FIRM becomes effective, flood insurance available within your community shall continue to be available in accordance with the effective FIRM dated August 23, 2000.

If warranted by substantive changes, during the appeal period, FEMA will send to you revised copies of the FIS report and FIRM. At the end of the 90-day appeal period and following the resolution of any appeals, FEMA will send you a letter of final BFE determinations.

The FIRM panels for St. Louis County, Missouri and Incorporated Areas have been computer-generated. Once the FIS report and FIRM are printed and distributed, the digital files containing the flood hazard data for the entire county can be provided to your community for use in a computer mapping system. In the mean time, if you have any questions about the digital files please contact Stantec Consulting Services Inc., 1500 Lake Shore Drive, Suite 100, Columbus, Ohio 43204, the designated mapping partner for preparing digital mapping files. These files can be used in conjunction with other thematic data for purposes of floodplain management, insurance determinations, and many other planning applications. In addition, your community may be eligible for additional credits under the NFIP Community Rating System if you implement your activities using digital mapping files.

If you have any questions regarding the proposed BFE determinations, revised FIS report, or revised FIRM for your community, please contact the FEMA Region VII Project Officer, Rick Nusz at (816) 283-7907.

Sincerely,



William R. Blanton Jr., CFM, Chief
Engineering Management Section
Mitigation Division

Enclosures:

- 1) Newspaper Notice
- 2) BFE Determination Notice to be published on FEMA's Web site
- 3) National Flood Insurance Program Regulations

cc: Community Map Repository
Jeff Paskiewicz, Community Floodplain Administrator

DEPARTMENT OF HOMELAND SECURITY

FEDERAL EMERGENCY MANAGEMENT AGENCY

Proposed Base Flood Elevation Determination for St. Louis County, Missouri and

Incorporated Areas The Department of Homeland Security's Federal Emergency Management Agency solicits technical information or comments on the proposed Base (1-percent-annual-chance) Flood Elevations (BFEs) shown in the Preliminary Flood Insurance Study (FIS) and on the Preliminary Flood Insurance Rate Map (FIRM) for your community. These proposed BFEs are the basis for the floodplain management measures that your community is required to either adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). For a detailed listing of the proposed BFEs and information on the statutory period provided for appeals, please visit FEMA's website at https://www.floodmaps.fema.gov/fhm/Scripts/bfe_main.asp, or call the FEMA Map Assistance Center toll free at 1-877-FEMA MAP.

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****Proposed Flood Elevation Determinations**

AGENCY: Federal Emergency Management Agency (FEMA, Department of Homeland Security)

SUMMARY: Technical information or comments are solicited on the proposed and proposed modified Base (1-percent-annual-chance) Flood Elevations (BFEs) shown on the Preliminary revised Flood Insurance Study (FIS) report and Flood Insurance Rate Map (FIRM) for your community. Comments on any aspect of the FIS and FIRM, other than the proposed BFEs, will also be considered. These BFEs and modified BFEs are the basis for the floodplain management measures that your community is required to either adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition these BFEs, once finalized, will be used by insurance agents, and others to calculate the appropriate flood insurance premium rates for new buildings and the contents in these buildings.

DATES & SUBMISSION: The appeal period begins following the second publication of the Notice of this proposed BFE determination in a newspaper of local circulation in your community and ends 90 days thereafter. All comments and/or appeals must be submitted no later than 90 days after the second publication of the Notice in the local newspaper to:

City of Bellefontaine Neighbors: The Honorable Marty Rudloff, Mayor, City of Bellefontaine Neighbors, 9641 Bellefontaine Road, Bellefontaine Neighbors, MO 63137

City of Bridgeton: The Honorable Conrad Bowers, Mayor, City of Bridgeton, 11955 Natural Bridge Road, Bridgeton, MO 63044

City of Chesterfield: The Honorable John Nations, Mayor, City of Chesterfield, 690 Chesterfield Parkway West, Chesterfield, MO 63017

City of Dellwood: The Honorable Jack Agnew, Mayor, City of Dellwood, 1763 Hudson Road, Dellwood, MO 63135

City of Des Peres: The Honorable Rick Lahr, Mayor, City of Des Peres, 12325 Manchester Road, Des Peres, MO 63131

City of Florissant: The Honorable Robert Lowery, Mayor, City of Florissant, 955 Rue Saint Francois Street, Florissant, MO 63031

City of Hazelwood: The Honorable T.R. Carr, Mayor, City of Hazelwood, 415 Elm Grove Lane, Hazelwood, MO 63042

City of Maryland Heights: The Honorable Michael Moeller, Mayor, City of Maryland Heights, 11911 Dorsett Road, Maryland Heights, MO 63043

City of Normandy: The Honorable James Murphy, Mayor, City of Normandy, 7700 Natural Bridge Road, Normandy, MO 63121

City of University City: The Honorable Joseph Adams, Mayor, City of University City, 6801 Delmar Boulevard, University City, MO 63130

City of Wildwood: The Honorable Timothy Woerther, Mayor, City of Wildwood, 183 Plaza Drive, Wildwood, MO 63040

City of Woodson Terrace: The Honorable Lawrence Besmer, Mayor, City of Woodson Terrace, 9351 Guthrie Avenue, Woodson Terrace, MO 63134

Unincorporated Areas of St. Louis County : The Honorable Charlie Dooley, County Executive, St. Louis County, St. Louis County Government Center, 41 South Central, Clayton, MO 63105

Village of Champ: The Honorable Charles Miller, Chairman, Village of Champ, 2600 Jessica Adele Court, Champ, MO 63043

Village of Riverview: The Honorable Steve Paro, Mayor, Village of Riverview, 9699 Lilac Drive, Riverview, MO 63137

ADDRESSES: The FIS and FIRM showing the proposed and proposed modified BFEs can be viewed at:

City of Bellefontaine Neighbors: 9641 Bellefontaine Road, Bellefontaine Neighbors, MO 63137

City of Bridgeton: 11955 Natural Bridge Road, Bridgeton, MO 63044

City of Chesterfield: 690 Chesterfield Parkway West, Chesterfield, MO 63017

City of Dellwood: 1415 Chambers Road, Dellwood, MO 63135

City of Des Peres: 12325 Manchester Road, Des Peres, MO 63131

City of Florissant: 955 Rue Saint Francois Street, Florissant, MO 63031

City of Hazelwood: 415 Elm Grove Lane, Hazelwood, MO 63042

City of Maryland Heights: 11911 Dorsett Road, Maryland Heights, MO 63043

City of Normandy: 7700 Natural Bridge Road, Normandy, MO 63121

City of University City: 6801 Delmar Boulevard, University City, MO 63130

City of Wildwood: 183 Plaza Drive, Wildwood, MO 63040

City of Woodson Terrace: 9351 Guthrie Avenue, Woodson Terrace, MO 63134

Unincorporated Areas of St. Louis County : 121 South Meramec Avenue, Clayton, MO 63105

Village of Champ: 121 South Meramec Avenue, Clayton, MO 63105

Village of Riverview: 9699 Lilac Drive, Riverview, MO 63137

Lessees and owners of real property are encouraged to review the FIS report, FIRM, and related materials.

FOR ADDITIONAL INFORMATION CONTACT: William R. Blanton, Jr., CFM, Chief Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street SW, Washington, DC 20472. Telephone number (202) 646-3151.

SUPPLEMENTARY INFORMATION: FEMA gives notice of the proposed determinations of BFEs and modified BFEs in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These BFEs, with the floodplain management measures required by 44 CFR 60.3, are the minimum measures that are required. It should not be construed to mean your community must change any existing ordinances that are more stringent in its floodplain management requirements. Your community may, at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed and proposed modified BFEs 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 the BFEs are finalized, and for the contents in those buildings.

Pursuant to the provisions of 5 U.S.C. 605(b), the Director for Mitigation, to whom authority has been delegated by the Director of FEMA, hereby certifies that the proposed BFE determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A BFE determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a community, will govern future construction within the floodplain area. By themselves, the BFE determinations impose no restriction unless and until the community voluntarily adopts floodplain ordinances in accord with these BFEs. Even if ordinances are adopted in compliance with Federal standards, the BFEs only prescribe building height in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; by itself, it has no economic impact.

Appellants must itemize each issue as an appeal or a comment. Appellants must identify themselves as the owner or lessee of property within the community, indicate how they heard about the proposed map change; describe how they believe their property rights have been adversely impacted within areas where new BFEs are proposed, and specify how the requirements of 44 CFR 67.6 have been met. Appellants should provide all other information they believe is helpful to the process that does not meet the conditions of being a formal appeal. Such information is considered a comment. Comments that are submitted within the appeal period that object to information on the FIRM or in the FIS report are called Protests. The issues raised (appeals and, comments) will be reviewed in aggregate and not addressed individually. Information must be sent directly to the community CEO. Any information submitted directly to FEMA without evidence that it was sent to the CEO within 90 days of the second publication in the local newspaper will be considered a comment.

During the formal appeal period, a community official or individual property owner may want to object to information shown on the FIRM, FBFM or FIS report. If the objection does not involve the proposed BFEs, it does not, in accordance with 44 CFR 67 constitute an appeal. Such objections are called

protests, and protests should be sent directly to the community CEO and not to FEMA.

Individuals providing information and comments who have been determined by FEMA to meet the criteria of "appellant" as articulated in 44 CFR 67.5 will be sent a copy of the CEO letter, which name them as appellants. This letter will be issued within 180 days of the second publication in the local newspaper. Individuals who only provide comments and protests will not be notified. However, the information they submit will be considered in finalizing the BFEs. The resolution of the appeal will be sent to the CEO and a copy sent to the appellants.

PROPOSED AND MODIFIED BASE FLOOD ELEVATIONS

The new elevations being proposed are given in the table below for the upstream and downstream limits of the flooding sources.

Community	Flooding Source	Location	Lat/Long Coordinates	* Elevation in feet (NGVD) ¹ + Elevation in feet (NAVD) ² # Depth in feet above ground ³ ^ Elevation in meters (MSL) ⁴	
				Existing	Modified
City of Normandy	Ball Creek	Approximately 450 feet upstream of I-70	38° 43' 13.98" -90° 18' 24.04"	None	+ 523
City of Chesterfield	Bonhomme Creek (Backwater from the Missouri River)	At the confluence with Caulks Creek	38° 40' 51.08" -90° 34' 10.64"	+ 463	+ 465
		Approximately 1,300 feet upstream of Chesterfield Airport Road	38° 39' 52.49" -90° 35' 2.81"	+ 464	+ 465
City of Woodson Terrace	Coldwater Creek	Approximately 400 feet downstream of Elsa Avenue	38° 43' 27.58" -90° 22' 23.79"	None	+ 554
		Just upstream of Isolda Avenue	38° 43' 26.98" -90° 22' 14.96"	None	+ 557
City of Chesterfield	Creve Coeur Creek (Overflow)	Approximately 1.3	38° 42' 34.77"		

City of Maryland Heights	from the Missouri River)	miles downstream of Creve Coeur Mill Road	-90° 29' 13.44"	+ 460	+ 461
		Just upstream of Creve Coeur Mill Road	38° 41' 34.20" -90° 29' 52.22"	+ 462	+ 463
City of Dellwood	Dellwood Creek	Approximately 900 feet upstream of Bon Oak Drive	38° 45' 17.44" -90° 16' 19.38"	None	+ 485
		Approximately 1,450 feet upstream of Bon Oak Drive	38° 45' 22.65" -90° 16' 19.92"	None	+ 487
City of University City	Engelholm Creek	Approximately 450 feet downstream of Bartmer Avenue	38° 39' 48.22" -90° 17' 51.4"	None	+ 498
		Just upstream of Bartmer Avenue	38° 39' 50.84" -90° 17' 50.33"	None	+ 502
Village of Champ City of Maryland Heights	Fee Fee Creek (Backwater from the Missouri River)	Downstream of Richard Farm Road	38° 44' 27.01" -90° 28' 8.94"	+ 457	+ 458
		Just upstream of Creve Coeur Mill Road	38° 44' 8.71" -90° 27' 48.55"	+ 457	+ 458
City of Des Peres	Grand Glaize East Creek	Approximately 1,200 feet upstream of Barrett Station Road	38° 36' 8.28" -90° 28' 21.56"	None	+ 472
Unincorporated Areas of St. Louis County	Lemay Creek (Backwater From the Mississippi River)	Approximately 700 feet upstream of Krumm Road	38° 27' 27.13" -90° 22' 40.17"	+ 417	+ 416
		Approximately 2,000 feet upstream of Krumm Road	38° 27' 39.66" -90° 22' 41.39"	+ 417	+ 416
City of Bellefontaine Neighbors Village of Riverview	Maline Creek (Backwater from the Mississippi River)	Approximately 0.5 miles downstream of St Cyr Road	38° 43' 48.3" -90° 13' 19.15"	+ 433	+ 431

		Approximately 1,300 feet downstream of St Cyr Road	38° 44' 0.13" -90° 13' 18.44"	+ 433	+ 431
Unincorporated Areas of St. Louis County	Mattese Creek (Backwater from the Mississippi River)	At the confluence with the Mississippi River	38° 27' 18.7" -90° 20' 12.23"	+ 417	+ 415
		Just downstream of Old Baumgartner Road	38° 27' 51.63" -90° 19' 41.02"	+ 417	+ 415
Unincorporated Areas of St. Louis County	Meramec River (Backwater from the Mississippi River)	At the confluence with the Mississippi River	38° 23' 15.5" -90° 20' 30.35"	+ 417	+ 415
		Approximately 2,000 feet Upstream of Lemay Ferry Road	38° 27' 18.98" -90° 22' 2.98"	+ 417	+ 415
Unincorporated Areas of St. Louis County	Mississippi River Lower Reach	At the confluence with the Meramec River	38° 23' 14.91" -90° 20' 30.03"	+ 417	+ 415
		Approximately 1.0 mile upstream of Interstate 255	38° 30' 2.25" -90° 16' 17.85"	+ 421	+ 420
Unincorporated Areas of St. Louis County	Mississippi River Upper Reach	Approximately 3.9 miles downstream of confluence with the Missouri River	38° 46' 21.32" -90° 10' 1.59"	+ 434	+ 433
		At confluence with the Missouri River	38° 48' 34.63" -90° 6' 58.86"	+ 435	+ 434
Unincorporated Areas of St. Louis County City of Bridgeton City of Chesterfield City of Florissant City of Hazelwood City of Maryland Heights Village of Champ	Missouri River	At confluence with the Mississippi River	38° 48' 35.54" -90° 6' 58.48"	+ 435	+ 434
		Approximately 5.8	38° 38' 13.62"		

		miles upstream of Interstate 64	-90° 43' 58.8"	+ 474	+ 476
Unincorporated Areas of St. Louis County	Watkins Creek (Backwater From the Mississippi River)	At the confluence with the Mississippi River	38° 46' 12.54" -90° 11' 13.77"	+ 434	+ 433
		Approximately 1,250 feet upstream of Coal Bank Road	38° 46' 24.15" -90° 10' 30.08"	+ 434	+ 433
City of Wildwood	Wildhorse Creek (Backwater From the Missouri River)	Just downstream of Centaur Road	38° 38' 41.06" -90° 42' 8.92"	+ 472	+ 473
		Approximately 0.6 miles downstream of Wild Horse Creek Road	38° 38' 9.87" -90° 42' 4.71"	+ 472	+ 473

All elevations referenced to the North American Vertical Datum of 1988 (NAVD).

¹National Geodetic Vertical Datum of 1929, rounded to nearest whole foot

²North American Vertical Datum of 1988, rounded to nearest whole foot

³Depth in feet above ground, rounded to nearest whole foot

⁴Mean Sea Level, rounded to the nearest 0.1 meter

PART 67—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Sec.

- 67.1 Purpose of part.
- 67.2 Definitions.
- 67.3 Establishment and maintenance of a flood elevation determination docket (FEDD).
- 67.4 Proposed flood elevation determination.
- 67.5 Right of appeal.
- 67.6 Basis of appeal.
- 67.7 Collection of appeal data.
- 67.8 Appeal procedure.
- 67.9 Final determination in the absence of an appeal by the community.
- 67.10 Rates during pendency of final determination.
- 67.11 Notice of final determination.
- 67.12 Appeal to District Court.

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.

SOURCE: 41 FR 46989, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 67.1 Purpose of part.

The purpose of this part is to establish procedures implementing the provisions of section 110 of Flood Disaster Protection Act of 1973.

§ 67.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

§ 67.3 Establishment and maintenance of a flood elevation determination docket (FEDD).

The Administrator shall establish a docket of all matters pertaining to flood elevation determinations. The docket files shall contain the following information:

- (a) The name of the community subject to the flood elevation determination;
- (b) A copy of the notice of the proposed flood elevation determination to the Chief Executive Officer (CEO) of the Community;
- (c) A copy of the notice of the proposed flood elevation determination published in a prominent local newspaper of the community;

(d) A copy of the notice of the proposed flood elevation determination published in the FEDERAL REGISTER;

(e) Copies of all appeals by private persons received by the Administrator from the CEO;

(f) Copies of all comments received by the Administrator on the notice of the proposed flood elevation determination published in the FEDERAL REGISTER.

(g) A copy of the community's appeal or a copy of its decision not to appeal the proposed flood elevation determination;

(h) A copy of the flood insurance study for the community;

(i) A copy of the FIRM for the community;

(j) Copies of all materials maintained in the flood elevation study consultation docket; and

(k) A copy of the final determination with supporting documents.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 67.4 Proposed flood elevation determination.

The Administrator shall propose flood elevation determinations in the following manner:

(a) Publication of the proposed flood elevation determination for comment in the FEDERAL REGISTER;

(b) Notification by certified mail, return receipt requested, of the proposed flood elevation determination to the CEO; and

(c) Publication of the proposed flood elevation determination in a prominent local newspaper at least twice during the ten day period immediately following the notification of the CEO.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

EDITORIAL NOTE: For references to FR pages showing lists of flood elevation determinations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 67.5 Right of appeal.

(a) Any owner or lessee of real property, within a community where a proposed flood elevation determination

has been made pursuant to section 1363 of the National Flood Insurance Act of 1968, as amended, who believes his property rights to be adversely affected by the Administrator's proposed determination, may file a written appeal of such determination with the CEO, or such agency as he shall publicly designate, within ninety days of the second newspaper publication of the Administrator's proposed determination.

(b) [Reserved]

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 67.6 Basis of appeal.

(a) The sole basis of appeal under this part shall be the possession of knowledge or information indicating that the elevations proposed by FEMA are scientifically or technically incorrect. Because scientific and technical correctness is often a matter of degree rather than absolute (except where mathematical or measurement error or changed physical conditions can be demonstrated), appellants are required to demonstrate that alternative methods or applications result in more correct estimates of base flood elevations, thus demonstrating that FEMA's estimates are incorrect.

(b) *Data requirements.* (1) If an appellant believes the proposed base flood elevations are technically incorrect due to a mathematical or measurement error or changed physical conditions, then the specific source of the error must be identified. Supporting data must be furnished to FEMA including certifications by a registered professional engineer or licensed land surveyor, of the new data necessary for FEMA to conduct a reanalysis.

(2) If an appellant believes that the proposed base flood elevations are technically incorrect due to error in application of hydrologic, hydraulic or other methods or use of inferior data in applying such methods, the appeal must demonstrate technical incorrectness by:

(i) Identifying the purported error in the application or the inferior data.

(ii) Supporting why the application is incorrect or data is inferior.

(iii) Providing an application of the same basic methods utilized by FEMA but with the changes itemized.

(iv) Providing background technical support for the changes indicating why the appellant's application should be accepted as more correct.

(v) Providing certification of correctness of any alternate data utilized or measurements made (such as topographic information) by a registered professional engineer or licensed land surveyor, and

(vi) Providing documentation of all locations where the appellant's base flood elevations are different from FEMA's.

(3) If any appellant believes the proposed base flood elevations are scientifically incorrect, the appeal must demonstrate scientific incorrectness by:

(i) Identifying the methods, or assumptions purported to be scientifically incorrect.

(ii) Supporting why the methods, or assumptions are scientifically incorrect.

(iii) Providing an alternative analysis utilizing methods, or assumptions purported to be correct.

(iv) Providing technical support indicating why the appellant's methods should be accepted as more correct and

(v) Providing documentation of all locations where the appellant's base flood elevations are different from FEMA's.

[48 FR 31644, July 1, 1983]

§ 67.7 Collection of appeal data.

(a) Appeals by private persons to the CEO shall be submitted within ninety (90) days following the second newspaper publication of the Administrator's proposed flood elevation determination to the CEO or to such agency as he may publicly designate and shall set forth scientific or technical data that tend to negate or contradict the Administrator's findings.

(b) Copies of all individual appeals received by the CEO shall be forwarded, as soon as they are received, to the Administrator for information and placement in the Flood Elevation Determination Docket.

(c) The CEO shall review and consolidate all appeals by private persons 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.

(d) The decision issued by the CEO on the basis of his review, on whether an appeal by the community in its own name shall be made, shall be filed with the Administrator not later than ninety days after the date of the second newspaper publication of the Administrator's proposed flood elevation determination and shall be placed in the FEDD.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 67.8 Appeal procedure.

(a) If a community appeals the proposed flood elevation determination, 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/her proposed determination is based.

(b) The Administrator shall resolve such appeal by consultation with officials of the local government, or by administrative hearings under the procedures set forth in part 68 of this subchapter, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice.

(c) The final determination by the Administrator where an appeal is filed shall be made within a reasonable time.

(d) Nothing in this section shall be considered to compromise an appellant's rights granted under § 67.12.

(e) The Administrator shall make available for public inspection the reports and other information used in making the final determination. This material shall be admissible in a court of law in the event the community seeks judicial review in accordance with § 67.12.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 67.9 Final determination in the absence of an appeal by the community.

(a) If the Administrator does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits the individual appeals which, in accordance with § 67.7 are filed within the community and forwarded by the CEO.

(b) The final determination shall be made pursuant to the procedures in § 67.8 and, modifications shall be made of his proposed determination as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 67.10 Rates during pendency of final determination.

(a) Until such time as a final determination is made and proper notice is given, no person within a participating community shall be denied the right to purchase flood insurance at the subsidized rate.

(b) After the final determination and upon the effective date of a FIRM, risk premium rates will be charged for new construction and substantial improvements. The effective date of a FIRM shall begin not later than six months after the final flood elevation determination.

§ 67.11 Notice of final determination.

The Administrator's notice of the final flood elevation determination for a community shall be in written form and published in the FEDERAL REGISTER, and copies shall be sent to the CEO, all individual appellants and the State Coordinating Agency.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

EDITORIAL NOTE: For the list of communities issued under this section, and not carried in the CFR, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 67.12

§ 67.12 Appeal to District Court.

(a) An appellant aggrieved by the final determination of the Administrator may appeal such determination only to the United States District Court for the District within which the community is located within sixty days after receipt of notice of determination.

(b) During the pendency of any such litigation, all final determinations of the Administrator shall be effective for the purposes of this title unless stayed by the court for good cause shown.

(c) The scope of review of the appellate court shall be in accordance with the provisions of 5 U.S.C. 706, as modified by 42 U.S.C. 4104(b).

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 33879, Aug. 27, 1984]

PART 68—ADMINISTRATIVE HEARING PROCEDURES

Sec.

- 68.1 Purpose of part.
- 68.2 Definitions.
- 68.3 Right to administrative hearings.
- 68.4 Hearing board.
- 68.5 Establishment of a docket.
- 68.6 Time and place of hearing.
- 68.7 Conduct of hearings.
- 68.8 Scope of review.
- 68.9 Admissible evidence.
- 68.10 Burden of proof.
- 68.11 Determination.
- 68.12 Relief.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 47 FR 23449, May 29, 1982, unless otherwise noted.

§ 68.1 Purpose of part.

The purpose of this part is to establish procedures for appeals of the Administrator's base flood elevation determinations, whether proposed pursuant to section 1363(e) of the Act (42 U.S.C. 4104) or modified because of changed conditions or newly acquired scientific and technical information.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

44 CFR Ch. I (10-1-06 Edition)

§ 68.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§ 68.3 Right to administrative hearings.

If a community appeals the Administrator's flood elevation determination established pursuant to § 67.8 of this subchapter, and the Administrator has determined that such appeal cannot be resolved by consultation with officials of the community or by submitting the conflicting data to an independent scientific body or appropriate Federal agency for advice, the Administrator shall hold an administrative hearing to resolve the appeal.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§ 68.4 Hearing board.

(a) Each hearing shall be conducted by a three member hearing board (hereinafter "board"). The board shall consist of a hearing officer (hereinafter "Judge") appointed by the Director based upon a recommendation by the Office of Personnel Management and two members selected by the Judge who are qualified in the technical field of flood elevation determinations. The Judge shall consult with anyone he deems appropriate to determine the technical qualifications of individuals being considered for appointment to the board. The board members shall not be FEMA employees.

(b) The Judge shall be responsible for conducting the hearing, and shall make all procedural rulings during the course of the hearing. Any formal orders and the final decision on the merits of the hearing shall be made by a majority of the board. A dissenting member may submit a separate opinion for the record.

(c) A technically qualified alternate will be appointed by the Judge as a member of the board when a technically qualified appointed member becomes unavailable. The Director will appoint an alternate Judge if the appointed Judge becomes unavailable.