

§ 67.4

44 CFR Ch. I (10–1–99 Edition)

(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 appearing in the Finding Aids section of this volume.

§ 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