

## § 66.4

## 44 CFR Ch. I (10–1–10 Edition)

### § 66.4 Appointment of consultation coordination officer.

The Federal Insurance Administrator may appoint an employee of the Federal Emergency Management Agency, or other designated Federal employee, as the Consultation Coordination Officer, for each community when an analysis is undertaken to establish or to modify flood elevations pursuant to a new study or a restudy. When a CCO is appointed by the Federal Insurance Administrator, the responsibilities for consultation and coordination as set forth in § 66.5 shall be carried out by the CCO. The Federal Insurance Administrator shall advise the community and the state coordinating agency, in writing, of this appointment.

[47 FR 771, Jan. 7, 1982, as amended at 49 FR 4751, Feb. 8, 1984]

### § 66.5 Responsibilities for consultation and coordination.

(a) Contact shall be made with appropriate officials of a community in which a proposed investigation is undertaken, and with the state coordinating agency.

(b) Local dissemination of the intent and nature of the investigation shall be encouraged so that interested parties will have an opportunity to bring relevant data to the attention of the community and to the Federal Insurance Administrator.

(c) Submission of information from the community concerning the study shall be encouraged.

(d) Appropriate officials of the community shall be fully informed of (1) The responsibilities placed on them by the Program, (2) the administrative procedures followed by the Federal Emergency Management Agency, (3) the community's role in establishing elevations, and (4) the responsibilities of the community if it participates or continues to participate in the Program.

(e) Before the commencement of an initial Flood Insurance Study, the CCO or other FEMA representative, together with a representative of the organization undertaking the study, shall meet with officials of the community. The state coordinating agency shall be notified of this meeting and may attend. At this meeting, the local

officials shall be informed of (1) The date when the study will commence, (2) the nature and purpose of the study, (3) areas involved, (4) the manner in which the study shall be undertaken, (5) the general principles to be applied, and (6) the intended use of the data obtained. The community shall be informed in writing if any of the six preceding items are or will be changed after this initial meeting and during the course of the ongoing study.

(f) The community shall be informed in writing of any intended modification to the community's final flood elevation determinations or the development of new elevations in additional areas of the community as a result of a new study or restudy. Such information to the community will include the data set forth in paragraph (e) of this section. At the discretion of the Regional Administrator in each FEMA Regional Office, a meeting may be held to accomplish this requirement.

[47 FR 771, Jan. 7, 1982, as amended at 49 FR 4751, Feb. 8, 1984]

## PART 67—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

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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 Federal Insurance 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 Federal Insurance Administrator from the CEO;
- (f) Copies of all comments received by the Federal Insurance 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 Federal Insurance 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 Federal Insurance 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 Federal Insurance 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 Federal Insurance 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 Federal Insurance Administrator's findings.

(b) Copies of all individual appeals received by the CEO shall be forwarded, as soon as they are received, to the Federal Insurance 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 Federal Insurance Administrator not later than ninety days after the date of the second newspaper publication of the Federal Insurance 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 Federal Insurance 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 Federal Insurance 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 Federal Insurance 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 Federal Insurance 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 Federal Insurance 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 Federal Insurance 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 Appeal to District Court.**

(a) An appellant aggrieved by the final determination of the Federal Insurance 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 Federal Insurance 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

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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 Federal Insurance 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]

### § 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 Federal Insurance Administrator's flood elevation determination established pursuant to § 67.8 of this subchapter, and the Federal Insurance 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 Federal Insurance 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 Administrator 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 Administrator will appoint an alternate Judge if the appointed Judge becomes unavailable.

### § 68.5 Establishment of a docket.

The Chief Counsel shall establish a docket for appeals referred to him/her by the Federal Insurance Administrator for administrative hearings. This docket shall include, for each appeal, copies of all materials contained in the flood elevation determination docket (FEDD) file on the matter, copies of all correspondence in connection with the appeal, all motions, orders, statements, and other legal documents, a transcript of the hearing, and the board's final determination.

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

### § 68.6 Time and place of hearing.

(a) The time and place of each hearing shall be designated by the Judge for that hearing. The Federal Insurance Administrator and the Chief Counsel shall be promptly advised of such designations.