

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 Ad-

ministrator 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

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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]

## 44 CFR Ch. I (10-1-07 Edition)

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 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

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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 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