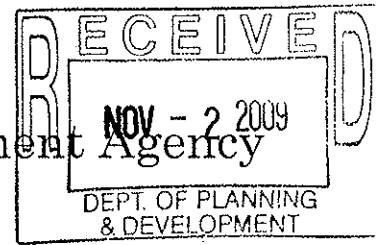




Federal Emergency Management Agency

Washington, D.C. 20472



October 29, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

155-19

William J. Fraser
City Manager
City of Montpelier
39 Main Street
Montpelier, Vermont 05602

Community Number: 505518
Community: City of Montpelier,
Washington County, Vermont

Dear Mr. Fraser:

On July 27, 2009, community coordination meetings were held to present the preliminary Flood Insurance Study (FIS) report and Flood Insurance Rate Map (FIRM). The preliminary FIS report and FIRM include the proposed addition of and/or changes to Base (1% annual chance) Flood Elevations (BFEs) in certain locations in the City of Montpelier. Public notifications of the initiation of the appeal process explained below and of the location of the publication of the proposed flood elevation determinations will be published in the *Times Argus* and the *Waterbury Record* on or about November 5, 2009 and November 12, 2009. In addition, the complete list of the proposed flood elevation determinations will be published on our website at <http://www.fema.gov/plan/prevent/fhm/bfe>. A copy of the newspaper notice and the notice of Proposed BFE Determinations published in the *Federal Register* on September 21, 2009, at Part 67, Volume 74, Pages 48047-48048 are enclosed.

These proposed BFEs, if finalized, will become the basis for floodplain management ordinances that your community must adopt to remain qualified for participation in the National Flood Insurance Program (NFIP).

Section 110 of the Flood Disaster Protection Act of 1973 (Public Law 93-234) is intended to ensure an equitable balancing of all the interests involved in the setting of BFEs. The legislation provides for an explicit process of notification and appeals for the community and interested parties prior to this office finalizing the BFEs. The regulations developed by this agency to implement Section 110 are found in Part 67 of Title 44 of the Code of Federal Regulations. We have outlined the appeal procedure below for your information and enclosed a document titled *Appeals and Protests to National Flood Insurance Program Maps* that documents the appeal and protest procedures and data requirements in further detail.

During the 90-day appeal period following the second publication in the above named newspapers, any interested party may submit an appeal of the proposed BFEs to you, or to an agency that you publicly designate. It is important to note, however, that the sole basis for such appeals is the possession of knowledge or information indicating that the proposed BFEs are scientifically or technically incorrect. This appeal data must be submitted to the Federal

Emergency Management Agency (FEMA) during the 90-day appeal period. Only appeals of the proposed BFEs supported by data can be considered before FEMA makes its final BFE determinations at the end of the 90-day period.

Note that the 90-day appeal period is statutory and cannot be extended. Appeals of the proposed BFEs shall be based only upon scientific and technical evidence contrary to that of the FEMA study. However, inquiries regarding data other than the proposed BFEs (i.e., incorrect street names, typographical errors or omissions, etc.) will be considered by FEMA, and any applicable changes will be made before the revised FIS report and FIRM become effective.

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 and request a map revision under Part 65 of the NFIP regulations. If warranted, FEMA will revise the FIS report and FIRM after the effective date. This means that the revised FIS report and FIRM would be issued with the elevations and flood hazard zones presently indicated, and flood insurance purchase requirements would be enforced accordingly, until such time as another revision could be made.

Any interested party who wishes to appeal should present the data that tends to negate or contradict our findings to you in such form as you may specify. We ask that you review and consolidate any appeal data you may receive and issue a written opinion stating whether the evidence presented is sufficient to justify an official appeal by the community in its own name on behalf of the interested parties. Whether or not the community decides to appeal, you must send copies of individual appeals, if any, as they are received to our FEMA address listed in the enclosure, *Appeals and Protests to National Flood Insurance Program Maps* with a courtesy copy to our FEMA Regional Office in Boston, Massachusetts at the address listed below.

If we do not receive an appeal from your community in its own name within 90 days of the second date of public notification, we shall consolidate and review on their own merits such appeal data from individuals that you may forward to us. We shall make such revisions to the proposed BFEs that may be appropriate. If the community decides to appeal in its own name, all individuals' appeal data must be consolidated into one appeal by you, because, in this event we are required to coordinate only with the local government as representative of all local interests. Our final decision will be in writing to you, and copies will be sent to each individual appellant and to the state coordinating agency.

The appeal resolution process will fully take into account any technical or scientific data submitted by the community that tends 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, or by an administrative hearing, or by the submission of the conflicting data to an independent scientific body or appropriate Federal Agency for advice. The method for resolution will be determined by FEMA. The reports and other information used in making the final BFE determinations will be made available for public inspection. Until any conflict of data is resolved, and until the revised FIS report and FIRM become effective, flood insurance previously available within the community shall continue to be

available under the currently effective FIS report and FIRM, dated February 17, 1982. The decision by the community to appeal, or a copy of its decision not to appeal, should be filed with this office no later than 90 days following the second publication of the notices in the *Times Argus* and the *Waterbury Record*.

You 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.

At the end of the 90-day appeal period and following the resolution of any appeals, we shall send you a letter of final BFE determinations.

If there are further questions regarding flood elevation revisions or the FIS report and FIRM for the community, please contact Mike Goetz, Chief, Risk Analysis Branch, FEMA, Region I, by telephone at (617) 956-7571 or by mail at 99 High Street, Sixth Floor, Boston, Massachusetts 02110, or the FEMA Map Assistance Center toll free at (877) 336-2627 (877-FEMA MAP).

In addition, the Vermont Department of Environmental Conservation (VT DEC), Water Quality Division, River Management Program is available to assist your community. You may contact Robert Evans, CFM, the NFIP State Coordinator, by telephone at (802) 241-1554, or by e-mail at rob.evans@state.vt.us. You may also contact Ned Swanberg, the Flood Hazard Map Modernization Coordinator, by telephone at (802) 241-4596, by e-mail at ned.swanberg@state.vt.us, or both by mail at 103 South Main Street, Building 10 North, Waterbury, Vermont 05671-0408.

Sincerely,



Kevin C. Long, Acting Chief
Engineering Management Branch
Mitigation Directorate

Enclosures

cc: Clancy Desmet, Zoning Administrator, City of Montpelier
Kerry Bogdan, Risk Analysis Branch, FEMA, Region I
Susan M. Sinclair, Executive Director, Central Vermont Regional Planning Commission
Robert Evans, CFM, NFIP State Coordinator, VT DEC, Water Quality Division,
River Management Program
Ned Swanberg, Flood Hazard Map Modernization Coordinator, VT DEC,
Water Quality Division, River Management Program
Laura Keating, Regional Support Center, FEMA, Region I

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY

**Proposed Base Flood Elevation Determinations for
Washington County, Vermont (All Jurisdictions)**

The Department of Homeland Security's Federal Emergency Management Agency has issued a preliminary Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) reflecting new or modified Base (1% annual chance) Flood Elevations (BFEs) for the Cities of Barre, Montpelier, Towns of Barre, Berlin, Middlesex, Calais, Duxbury, East Montpelier, Moretown, Northfield, Waterbury and the Village of Waterbury, Washington County, Vermont (All Jurisdictions). Technical information or comments are solicited on the proposed and proposed modified BFEs shown on the preliminary FIS and FIRM for various communities in Washington County. 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 being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program. However, before the BFEs or modified BFEs are effective for floodplain management purposes, you will be provided an opportunity to appeal the proposed elevations. For information on the statutory 90-day period provided for appeals, as well as a detailed listing of the proposed and proposed modified BFEs and the addresses where copies of the FIRM are available for review, please visit our website at <http://www.fema.gov/plan/prevent/fhm/bfe>, or call the FEMA Map Assistance Center toll free at 1-877-FEMA MAP (1-877-336-2627).

other document prepared by the enrolled actuary, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current legal obligations. The term "records of the client" does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the enrolled actuary or the enrolled actuary's firm, employees or agents if the enrolled actuary is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

* * * * *

(m) The rules of this section apply to all actuarial services and related acts performed on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 10. Section 901.31 is amended by revising paragraphs (a) and (c) introductory text to read as follows:

§ 901.31 Grounds for suspension or termination of enrollment.

(a) *Failure to satisfy requirements for enrollment.* The enrollment of an actuary may be terminated if it is found that the actuary did not satisfy the eligibility requirements set forth in § 901.11 or § 901.12.

* * * * *

(c) *Disreputable conduct.* The enrollment of an actuary may be suspended or terminated if it is found that the actuary has, at any time after he/she applied for enrollment, engaged in any conduct set forth in § 901.12(f) or other conduct evidencing fraud, dishonesty, or breach of trust. Such other conduct includes, but is not limited to, the following:

* * * * *

Par. 11. Section 901.32 is amended by revising the last sentence to read as follows:

§ 901.32 Receipt of information concerning enrolled actuaries.

* * * If any other person has information of any such violation, he/she may make a report thereof to the Executive Director.

Par. 12. Section 901.47 is amended by revising the last sentence to read as follows:

§ 901.47 Transcript.

* * * Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to parties upon the payment of a reasonable fee (31 U.S.C. 9701).

Par. 13. Section 901.72 is added to read as follows:

§ 901.72 Additional rules.

The Joint Board may, in notice or other guidance of general applicability, provide additional rules regarding the enrollment of actuaries.

Zenaida Samaniego,
Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. E9-22454 Filed 9-18-09; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-B-1074]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to 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 elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before December 21, 2009.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1074, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW.,

Washington, DC 20472, (202) 646-2820, or (e-mail) kevin.long@dhs.gov.

FOR FURTHER INFORMATION CONTACT:

Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) kevin.long@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, 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 proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations 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 these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the

applicable standards of Executive Order 12988.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

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.

List of Subjects in 44 CFR Part 67

PART 67—[AMENDED]

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

1. The authority citation for part 67 continues to read as follows:

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Boone County, Arkansas, and Incorporated Areas				
Crooked Creek	Approximately 200 feet downstream of Highway 65 ...	None	+1,047	Unincorporated Areas of Boone County.
Dry Jordan Creek	Approximately 1,300 feet upstream of Cloverhill Road	None	+1,070	Unincorporated Areas of Boone County.
	Approximately 0.63 miles upstream of Goblin Drive ...	None	+1,167	
Dry Jordan Tributary	Approximately 0.64 miles upstream of Goblin Drive	None	+1,167	Unincorporated Areas of Boone County.
	Approximately 560 feet upstream of Highway 65	None	+1,208	
	Approximately 720 feet upstream of Highway 65	None	+1,208	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (*see below*) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Boone County

Maps are available for inspection at 100 North Main Street, Harrison, AR 72601.

Johnson County, Arkansas, and Incorporated Areas				
Little Willett Branch	Just upstream of State Highway 103	None	+409	Unincorporated Areas of Johnson County.
	Approximately 200 feet upstream of State Highway 103.	None	+409	
Sprada Creek	Approximately 1,050 feet downstream of Private Road 3477.	None	+391	Unincorporated Areas of Johnson County.
	Just upstream of County Highway 3520	None	+411	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (*see below*) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Johnson County

Maps are available for inspection at P.O. Box 278, 705 Cline Road, Clarksville, AR 72830.

Del Norte County, California, and Incorporated Areas				
Lake Earl	Entire shoreline	None	+13	Unincorporated Areas of Del Norte County.
Lake Tolowa	Entire shoreline	None	+13	Unincorporated Areas of Del Norte County.
Overflow Southwest of Smith River.	Approximately 2,000 feet east of the intersection of Prigmore Street and Fisher Drive.	None	+13	Unincorporated Areas of Del Norte County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Pacific Ocean	Approximately 500 feet west of the intersection of Highway 101 and Reynolds Court.	None	+40	Unincorporated Areas of Del Norte County.
	From approximately 1,420 feet north of Pyramid Point to approximately 7,870 feet south of the mouth of Lake Tolowa along the shoreline of the Pacific Ocean.	None	+14-20	
	Approximately 7,000 feet north of the mouth of Lake Tolowa just inland of the shoreline of the Pacific Ocean.	None	#1	
	Approximately 2,300 feet north of the mouth of Lake Tolowa just inland of the shoreline of the Pacific Ocean.	None	#2	
Rowdy Creek	Confluence with Smith River	None	+25	Unincorporated Areas of Del Norte County.
Sheetflow Southwest of Smith River.	Approximately 1,450 feet upstream of Highway 101 ... From just downstream of Highway 101 to approximately 500 feet west of Lower Lake Road between Tryon Creek and the Smith River.	None	+64	Unincorporated Areas of Del Norte County.
		None	#2	
Smith River	Mouth of the Smith River	None	+15	Unincorporated Areas of Del Norte County.
	Approximately 2,100 feet upstream of Highway 101 ...	None	+47	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Del Norte County

Maps are available for inspection at City Hall, Public Works Department, 377 J Street, Crescent City, CA 95531.

Edmonson County, Kentucky, and Incorporated Areas

Alexander Creek (Backwater effects from Green River).	From confluence with Green River to approximately 240 feet upstream of confluence with Alexander Creek Tributary 3.	None	+446	Unincorporated Areas of Edmonson County.
Bear Creek (Backwater effects from Green River).	From confluence with Green River to approximately 3.8 miles upstream of confluence with Green River.	None	+438	Unincorporated Areas of Edmonson County.
Beaverdam Creek South (Backwater effects from Green River).	From confluence with Green River to approximately 3.4 miles upstream of confluence with Green River.	None	+449	Unincorporated Areas of Edmonson County, City of Brownsville.
Beaverdam Creek Tributary 6 (Backwater effects from Green River).	From confluence with Beaverdam Creek South to approximately 1,400 feet upstream of confluence with Beaverdam Creek South.	None	+449	Unincorporated Areas of Edmonson County, City of Brownsville.
Brier Creek (Backwater effects from Nolin Lake).	From confluence with Nolin Lake to approximately 0.6 mile upstream of confluence with Nolin Lake.	None	+560	Unincorporated Areas of Edmonson County.
Bylew Creek (Backwater effects from Green River).	From confluence with Nolin River to approximately 1.2 miles upstream of confluence with Nolin River.	None	+455	Unincorporated Areas of Edmonson County.
Dog Creek (Backwater effects from Nolin Lake).	From county boundary to approximately 0.6 mile upstream of confluence with Dog Creek Tributary 1.	None	+560	Unincorporated Areas of Edmonson County.
Green River	At confluence with Bear Creek	None	+438	Unincorporated Areas of Edmonson County, City of Brownsville.
	At approximately 3.4 miles upstream of confluence with Ugly Creek.	None	+480	
Green River Tributary 4 (Backwater effects from Green River).	From confluence with Green River to approximately 0.6 mile upstream of confluence with Green River.	None	+445	Unincorporated Areas of Edmonson County.
Honey Creek (Backwater effects from Green River).	From confluence with Green River to approximately 1.6 miles upstream of confluence with Green River.	None	+443	Unincorporated Areas of Edmonson County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Indian Creek (Backwater effects from Green River).	From confluence with Green River to approximately 0.9 mile upstream of confluence with Green River.	None	+452	Unincorporated Areas of Edmonson County, City of Brownsville, City of Brownsville.
Laurel Branch (Backwater effects from Green River).	From confluence with Beaverdam Creek South to approximately 0.5 mile upstream of confluence with Beaverdam Creek South.	None	+449	
Little Beaverdam Creek (Backwater effects from Green River).	From confluence with Green River to approximately 1 mile upstream of confluence with Sally Branch.	None	+442	Unincorporated Areas of Edmonson County.
Nolin Lake	Entire shoreline of Nolin Lake	None	+560	Unincorporated Areas of Edmonson County.
Nolin River (Backwater effects from Green River).	From confluence with Green River to approximately 0.8 mile upstream of confluence with Bylew Creek.	None	+455	Unincorporated Areas of Edmonson County.
Sally Branch (Backwater effects from Green River).	From confluence with Little Beaverdam Creek to approximately 0.6 mile upstream of confluence with Little Beaverdam Creek.	None	+442	Unincorporated Areas of Edmonson County.
Ugly Creek (Backwater effects from Green River).	From confluence with Green River to approximately 1.1 miles upstream of confluence with Green River.	None	+477	Unincorporated Areas of Edmonson County.
Wolf Creek (Backwater effects from Nolin Lake).	From confluence with Dog Creek to approximately 1 mile upstream of confluence with Dog Creek.	None	+560	Unincorporated Areas of Edmonson County.

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Brownsville

Maps are available for inspection at 121 Washington Street, Brownsville, KY 42210.

Unincorporated Areas of Edmonson County

Maps are available for inspection at 108 North Main Street, Brownsville, KY 42210.

Lincoln County, Nevada, and Incorporated Areas

Clover Creek	Approximately 280 feet upstream of confluence with Meadow Valley Wash (Near Caliente).	+4,404	+4,409	Unincorporated Areas of Lincoln County, City of Caliente.
Meadow Valley Wash (Near Caliente).	Approximately 2.4 miles upstream of confluence with Meadow Valley Wash (Near Caliente).	None	+4,473	Unincorporated Areas of Lincoln County, City of Caliente.
	Approximately 0.73 mile downstream of Union Pacific Railroad.	None	#2	
	Approximately 1,540 feet downstream of Union Pacific Railroad.	None	#3	
Meadow Valley Wash (Near Ursine).	Approximately 0.73 mile downstream of Union Pacific Railroad.	+4,329	+4,329	Unincorporated Areas of Lincoln County.
	Approximately 674 feet upstream of U.S. Highway 93	+4,437	+4,438	
	Approximately 1.0 mile downstream of North Eagle Valley Road.	None	+5,543	
	Approximately 1,150 feet upstream of North Eagle Valley Road.	None	+5,607	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

ADDRESSES

City of Caliente

Maps are available for inspection at 100 Depot Avenue, Caliente, NV 89008.

Unincorporated Areas of Lincoln County

Maps are available for inspection at the Planning and Zoning Department, 181 Main Street, Suite 107, Pioche, NV 89043.

Clay County, Tennessee, and Incorporated Areas

Cumberland River	Approximately 3.5 miles downstream of Highway 52 ..	None	+508	Unincorporated Areas of Clay County, City of Celina.
	Approximately 4.8 miles upstream of Highway 52	None	+518	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Celina

Maps are available for inspection at City Hall, 143 Cordell Hull Drive, Celina, TN 38551.

Unincorporated Areas of Clay County

Maps are available for inspection at the Clay County Public Library, 116 Guffey Street, Celina, TN 38551.

Atascosa County, Texas, and Incorporated Areas

Rutledge Hollow Creek	Just upstream of Roys Drive	None	+440	Unincorporated Areas of Atascosa County.
	Approximately 500 feet upstream of Roys Drive	None	+442	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Atascosa County

Maps are available for inspection at Circle Drive 41, Jourdanton, TX 78026.

Washington County, Vermont (All Jurisdictions)

Great Brook No. 1	At the confluence with Winooski River	+503	+501	Town of Middlesex.
	Approximately 140 feet downstream of U.S. Route 2	+503	+501	
Gunnors Brook	At the downstream side of Brook Street	+598	+596	City of Barre.
	Approximately 80 feet upstream of Brook Street	None	+616	
Mad River	At the confluence with Winooski River	+452	+454	Town of Moretown.
	Approximately 950 feet upstream of confluence with Winooski River.	+452	+454	
Mirror Lake	Entire shoreline	None	+1,047	Town of Calais.
North Montpelier Pond	Entire shoreline	None	+708	Town of Calais, Town of East Montpelier.
Stevens Branch	At the confluence with Winooski River	+547	+544	Town of Barre, City of Barre, City of Montpelier, Town of Berlin.
	At county boundary (approximately 2.0 miles upstream of Snowbridge Road).	+741	+740	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Sunny Brook of Winooksi River.	At the confluence with Winooski River	+513	+510	Town of Middlesex.
Thatcher Brook	At downstream side of New England Central Railroad	+513	+510	Town of Waterbury.
	Approximately 225 feet upstream of Stowe Street	+503	+502	
Union Brook	Approximately 1,100 feet upstream of Stowe Street ...	+504	+503	Village of Northfield.
	At the confluence with Dog River	+727	+728	
Winooski River	Approximately 60 feet upstream of Water Street	+727	+728	Town of Middlesex, City of Montpelier, Town of Berlin, Town of Duxbury, Town of East Montpelier, Town of Moretown, Town of Waterbury, Village of Waterbury.
	At Chittenden County Boundary (approximately 13,080 feet downstream of Bolton Falls Dam).	+341	+342	
	At downstream side of Green Mountain Power No. 4 Dam.	+597	+595	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Barre

Maps are available for inspection at City Hall, 6 North Main Street, Barre, VT 05641.

City of Montpelier

Maps are available for inspection at the Planning, Zoning, and Community Development Department, City Hall, 39 Main Street, Montpelier, VT 05602.

Town of Barre

Maps are available for inspection at the Town Clerk's Office, 149 Websterville Road, Websterville, VT 05678.

Town of Berlin

Maps are available for inspection at the Town Zoning Office, 108 Shed Road, Berlin, VT 05602.

Town of Calais

Maps are available for inspection at the Town Clerk's Office, 3120 Pekin Brook Road, East Calais, VT 05650.

Town of Duxbury

Maps are available for inspection at the Town Office, 5421 Vermont Route 100, Duxbury, VT 05676.

Town of East Montpelier

Maps are available for inspection at the Town Hall, 40 Kelton Road, East Montpelier, VT 05651.

Town of Middlesex

Maps are available for inspection at the Town Clerk's Office, 5 Church Street, Middlesex, VT 05602.

Town of Moretown

Maps are available for inspection at the Town Clerk's Office, 994 Vermont Route 100B, Moretown, VT 05660.

Town of Waterbury

Maps are available for inspection at the Waterbury Municipal Offices, 51 South Main Street, Waterbury, VT 05676.

Village of Northfield

Maps are available for inspection at the Zoning Office, 51 South Main Street, Northfield, VT 05663.

Village of Waterbury

Maps are available for inspection at the Waterbury Municipal Offices, 51 South Main Street, Waterbury, VT 05676.

Upshur County, West Virginia, and Incorporated Areas

Brushy Fork (Backwater flooding from Buckhannon River).	Approximately at the confluence with Fink Run	None	+1,415	Unincorporated Areas of Upshur County.
	Approximately 700 feet upstream of County Route 7/1 (Left Branch of Brushy Fork).	None	+1,415	
Fink Run (Backwater flooding from Buckhannon River).	Just upstream of Old Weston Road	None	+1,415	Unincorporated Areas of Upshur County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Unnamed Tributary No. 1 to Fink Run (Backwater flooding from Buckhannon River).	Approximately 2,100 feet upstream of intersection of Old Weston Road and County Route 5/7 (Mudlick Run). Approximately at the area bounded by US Route 33, Wabash Avenue, and County Route 33/1.	None	+1,415	Unincorporated Areas of Upshur County.
		None	+1,415	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Upshur County

Maps are available for inspection at 38 West Main Street, Buckhannon, WV 26201.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Deborah S. Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9-22581 Filed 9-18-09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1135

[STB Ex Parte No. 682]

Annual Submission of Tax Information for Use in the Revenue Shortfall Allocation Method

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) proposes that the Association of American Railroads (AAR) annually update each Class I railroad's weighted average State tax rate for use in the Revenue Shortfall Allocation Method (RSAM), which is one of three benchmarks that together are used to determine the reasonableness of a challenged rate under the Board's *Simplified Standards for Rail Rate Cases*, STB Docket No. 646 (Sub-No. 1) (STB served Sept. 5, 2007)

(*Simplified Standards*). Pursuant to 49 U.S.C. 11145, the Board proposes that AAR calculate the weighted average State tax rate using the number of miles operated by each Class I carrier in each state and the corporate income tax rates for each State. The Board proposes that AAR submit this information on or before the due date for the Class I railroads to submit their Annual Report R-1, Schedule 250.

DATES: Comments must be filed by October 21, 2009. Replies are due November 10, 2009.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 682, 395 E Street, SW., Washington, DC 20423-0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Timothy J. Stafford at (202) 245-0356. Assistance for the hearing impaired is available through the Federal

Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Board recently completed a revision to its methodology for calculating RSAM, one of the three benchmarks used in the rate standard applied to the smallest rate disputes under *Simplified Standards*. See *Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method*, STB Ex Parte No. 646 (Sub-No. 2) (STB served May 11, 2009) (*RSAM Taxes*). Specifically, that revision addressed the methodology used to calculate railroad-specific tax rates to be reflected in RSAM. The calculation of the railroad-specific weighted average state tax rates requires, as one component, the state tax rates applicable to each Class I railroad, which can vary by state and railroad depending on a number of factors. The Board noted in *RSAM Taxes* that, because of this variance, the Board would need updated tax information on an annual basis. Therefore, the Board is now instituting this proceeding to propose that AAR annually update each Class I railroad's weighted average state tax information.

Under the Board's proposal the AAR would calculate the weighted average state tax rate for each Class I railroad using the state corporate income tax rates and the number of miles operated by each carrier in each state for the previous year. For the state corporate income tax rates, AAR would use the state corporate tax information

Federal Emergency Management Agency
Federal Insurance and Mitigation Administration

Appeals and Protests to National Flood Insurance Program Maps

an excerpt from

**A GUIDE
FOR COMMUNITY OFFICIALS**

February 2008

APPEALS AND PROTESTS TO NATIONAL FLOOD INSURANCE PROGRAM MAPS

Appeals

The Base (1% annual chance) Flood Elevations (BFEs) shown on Flood Insurance Rate Maps (FIRMs) and on the Flood Profiles in Flood Insurance Study (FIS) reports are the basis for the detailed floodplain boundaries, detailed flood insurance risk zones, and floodway boundaries shown on FIRMs. That information, including the BFEs, is used for floodplain management and insurance purposes by Federal, State, and local agencies. Because of the significance of the BFEs, FEMA is careful to ensure their accuracy. In addition to applying rigorous standards in developing and updating flood risk information, FEMA provides communities with an opportunity to review new or revised BFEs before they become final, and to appeal them if they are believed to be scientifically or technically incorrect.

Background

In preparing initial FISs and FIRMs and in processing revised FISs and FIRMs and Map Revisions, FEMA may determine new BFEs for flooding sources for which it has not previously determined BFEs or may revise previously determined BFEs shown on effective FIRMs. When it determines new or revised BFEs for a community, FEMA must, by law, provide the community with a 90-day appeal period.

FEMA starts the appeal period by publishing a notice of the proposed new or revised BFEs in a local newspaper with wide circulation and in the *Federal Register*. The notice is typically published in the legal advertisements portion of the classified advertisement section of the newspaper. Community officials are encouraged to provide an even wider distribution to ensure that residents are aware of the proposed BFEs. The newspaper notice is published twice; the second publication usually takes place 1 week after the first. On the date of the second publication, the 90-day appeal period begins.

During the appeal period, community officials and individual property owners may appeal the proposed BFEs by submitting data to show that the BFEs are scientifically or technically incorrect. After the 90-day appeal period has elapsed and any Appeals have been resolved, FEMA issues a final BFE determination.

New BFEs and revised BFEs that result from a revised FIS are presented in a Preliminary FIS report and on a Preliminary FIRM, which are sent to the affected community before the start of the appeal period. New BFEs that result from a Map Revision are also presented in a Preliminary FIS report and on a Preliminary FIRM that are sent to the community before the start of the appeal period.

However, revised BFEs that result from a Map Revision, depending on whether they are higher or lower than those on the effective FIRM, may be presented in one of two ways. Revisions that result in higher BFEs are generally made through the PMR process, in which the FIRM and FIS report are revised and reprinted and a Preliminary FIRM and FIS report are sent to the community before the start of the appeal period. Revisions that result in lower BFEs, however, may be made by Letter of Map Revision (LOMR); therefore, no revised FIRM or FIS report would be prepared.

The LOMR, which is sent to the community, describes the revisions, including those made to the BFEs; officially revises the FIRM; and informs the community of the publication dates for the notice of the revised BFEs. As with FISs, RFISs, and PMRs, the appeal period begins on the second publication date in the local newspaper.

North American Vertical Datum of 1988

Because the National Geodetic Survey has determined that the national vertical control network needs to be readjusted, FEMA will be

converting NFIP maps gradually from the old national datum, National Geodetic Vertical Datum of 1929 (NGVD), to a new national datum, North American Vertical Datum of 1988 (NAVD 88). Therefore, when submitting an Appeal, the appellant should use the reference datum on the preliminary FIRM panel. For more information on the new datum, the reader should refer to the *Converting the National Flood Insurance Program to the North American Vertical Datum of 1988, Guidelines for Community Officials, Engineers, and Surveyors*. To obtain copies of this document, please contact the FEMA Distribution Center by telephone at (800) 480-2520.

How to Submit an Appeal

Because the CEO is responsible for ensuring that the community meets its obligations as a participant in the NFIP, FEMA consults and confers with the CEO, or with a local official designated by the CEO (such as a floodplain administrator, city planner, or city engineer), to resolve Appeals. Therefore, any individual property owner who wishes to appeal the proposed BFEs must submit the Appeal to the CEO or to the designated local official so that the community can comply with the requirements of Part 67 of the NFIP regulations.

The CEO or designated community official should review each Appeal and, when forwarding it to FEMA, should state whether the community supports the Appeal. The CEO or designee may also appeal on behalf of the community.

Appeals must be submitted during the formal 90-day appeal period. However, when the CEO receives or expects to receive numerous Appeals, they should be collected and forwarded to FEMA at the end of the appeal period. It is in the interest of the community for the CEO or designee to notify FEMA of any Appeals before the end of the appeal period; otherwise, FEMA might be unaware of legitimate Appeals and might proceed with issuing the final BFE determination without considering the Appeals.

All Appeals, with supporting data, are to be sent by the CEO to:

Engineering Management Branch
Mitigation Directorate
Federal Emergency Management Agency
500 C Street, SW.
Washington, DC 20472

In addition, it is requested that the community also send a copy of this information to the FEMA Regional Office.

Required Supporting Data

An Appeal must be based on data that show the proposed BFEs to be scientifically or technically incorrect. The distinction between “scientifically incorrect” and “technically incorrect” is important because of the differences in the types and amounts of data that an appellant must submit to demonstrate one versus the other. Definitions of those terms are provided later in this Chapter. First, however, it is appropriate to discuss the meaning of the word “correct” as it applies to the BFEs.

The BFEs presented in FIS reports and on FIRMs are the result of engineering methodologies that are used by FEMA FIS Contractors and others whose data FEMA approves and uses. Because numerous methodologies have been developed for estimating flood discharges and flood elevations under a variety of conditions, FIS Contractors and others use their professional judgment in selecting methodologies that are appropriate for the conditions in a particular community.

In general, because the methodologies are the result of attempts to reduce complex physical processes to mathematical models, the methodologies include simplifying assumptions. Usually, the methodologies are used with data developed specifically for the FIS. Therefore, the results of the methodologies are affected by the amount of data collected and the precision of any measurements made.

Because of the judgments and assumptions that must be made and the limits imposed by cost

considerations, the “correctness” of the BFEs is often a matter of degree, rather than absolute. For that reason, appellants who contend that the BFEs are incorrect because better methodologies could have been used, better assumptions could have been made, or better data could have been used must provide alternative analyses that incorporate such methodologies, assumptions, or data and that quantify their effect on the BFEs. FEMA will review the alternative analyses and determine whether they are superior to those used for the FIS.

The data that must be submitted in support of the various types of Appeals are discussed in the subsections that follow.

Scientifically Incorrect BFEs

The BFEs are said to be scientifically incorrect if the methodology used in the determination of the BFEs is inappropriate or incorrect, or if the assumptions made as part of the methodology are inappropriate or incorrect. An Appeal that is based on the BFEs being scientifically incorrect would therefore contend that the use of a different methodology or different assumptions would produce more accurate results (i.e., BFEs that are more correct).

Appeals Based on Contention That Hydrologic Methodology is Inappropriate or Incorrect

To show that an inappropriate or incorrect hydrologic methodology has been used, an appellant must submit the following data:

- New hydrologic analysis based on an alternative methodology
- Explanation for superiority of alternative methodology
- New hydraulic analysis based on flood discharge values from new hydrologic analysis
- Revised flood profiles
- Revised floodplain and floodway boundary delineations

Appeals Based on Contention That Hydraulic Methodology Is Inappropriate or Incorrect

To show that an inappropriate or incorrect hydraulic methodology has been used, an appellant must submit the following data:

- New hydraulic analysis based on alternative methodology and original flood discharge values
- Explanation for superiority of alternative methodology
- Revised flood profiles
- Revised floodplain and floodway boundary delineations

Technically Incorrect BFEs

The BFEs are said to be technically incorrect if at least one of the following is true:

- The methodology was not applied correctly.
- The methodology was based on insufficient or poor-quality data.
- The application of the methodology included indisputable mathematical or measurement errors.
- The methodology did not account for the effects of physical changes that have occurred in the floodplain.

Appeals Based on Contention That Methodology Has Not Been Applied Correctly

To show that a hydrologic methodology was not applied correctly, an appellant must submit the following data:

- New hydrologic analysis in which original methodology has been applied differently
- Explanation for superiority of new application
- New hydraulic analysis based on flood discharge values from new hydrologic analysis
- Revised flood profiles
- Revised floodplain and floodway boundary delineations

To show that a hydraulic methodology was not applied correctly, an appellant must submit the following data:

- New hydraulic analysis, based on original flood discharge values, in which original methodology has been applied differently
- Explanation for superiority of new application
- Revised flood profiles
- Revised floodplain and floodway boundary delineations

Appeals Based on Contention That Insufficient or Poor-Quality Data Were Used

To show that insufficient or poor-quality hydrologic data were used, an appellant must submit the following data:

- Data believed to be better than those used in original hydrologic analysis
- Documentation for source of data
- Explanation for improvement resulting from use of new data
- New hydrologic analysis based on better data
- New hydraulic analysis based on flood discharge values resulting from new hydrologic analysis
- Revised flood profiles
- Revised floodplain and floodway boundary delineations

To show that insufficient or poor-quality hydraulic data were used, an appellant must submit the following data:

- Data believed to be better than those used in original hydraulic analysis
- Documentation for source of new data
- Explanation for improvement resulting from use of new data
- New hydraulic analysis based on better data and original flood discharge values
- Revised floodplain and floodway boundary delineations

Appeals Based On Contention That Analysis Contains Indisputable Errors

To show that a mathematical error was made, an appellant must identify the error. FEMA will

perform any required calculations and make the necessary changes to the FIRM, FBFM, and FIS report.

To show that a measurement error (e.g., an incorrect surveyed elevation used in the FIS) was made, appellants must identify the error and provide the correct measurement. Any new survey data provided must be certified by a registered professional engineer or licensed land surveyor. FEMA will perform any required calculations and make the necessary changes to the FIRM, FBFM, and FIS report.

Appeals Based on Effects of Physical Changes That Have Occurred in Floodplain

Appellants must identify the changes that have occurred and provide the data FEMA needs to perform a reanalysis. The data may include topographic maps, grading plans, new stream channel and floodplain cross sections, and dimensions of structures.

Among the types of physical changes on which an Appeal may be based is the construction of earthfill levees and similar structures. FEMA has established minimum requirements for structural stability, maintenance, and operation that a levee must meet before it can be recognized as providing 100-year flood protection. The data that appellants must provide in support of an appeal based on the effects of a levee are described in the following section, "General Technical Guidance."

In general, Appeals based on the effects of flood-control structures must demonstrate that the structures are complete and functional. The only exception is for systems that involve Federal funds, where the construction of the system meets the requirement for "adequate progress" as defined in Section 61.12 of the NFIP regulations. The specific data that appellants must provide in support of an Appeal based on the ultimate effects of such a system are also described in "General Technical Guidance."

General Technical Guidance

When developing technical supporting data, appellants should consider the following points:

- Unless Appeals are based on indisputable mathematical or measurement errors or the effects of physical changes that have occurred in the floodplain, they must be accompanied by all data that FEMA needs to revise the FIRM, FBFM, and FIS report. Therefore, appellants should be prepared to perform hydrologic and hydraulic analyses, to plot revised flood profiles, and to delineate revised floodplain and floodway boundaries as necessary.
- New flooding information cannot be added to an NFIP map in such a way as to create mismatches with the flooding information shown for unrevised areas. Therefore, in performing new analyses and developing revised flooding information, appellants must tie the new flood elevations, floodplain boundaries, and floodway boundaries into those shown on the maps for areas not affected by the Appeal.
- For Appeals involving new flood discharge values, extensive changes in hydraulic conditions, or complex situations in which changes made to the flooding information developed for one flooding source will affect that developed for others, appellants may be required to provide new information for a large portion of the map.
- All analyses and data submitted by appellants, including those that show mathematical or measurement errors, must be certified by a registered professional engineer or licensed land surveyor, as appropriate.
- Appeals, except for those based on the effects of flood protection systems under construction that meet the previously listed requirements, cannot be based on the effects of proposed projects or future conditions. Therefore, any maps, plans, drawings, measurements, or ground elevation data submitted by appellants must be certified as representing existing, or "as-built," conditions.
- Generally, when appellants are required to submit hydrologic or hydraulic analyses, those analyses must be performed for the same recurrence interval floods studied in the FIS. For riverine, lacustrine, and coastal flooding sources studied by detailed methods, FISs include analyses of the 100-year flood and, usually, the 10-, 50-, and 500-year floods. Often, a hydraulic analysis of the 100-year floodway is performed for riverine flooding sources. On the other hand, in areas subject to shallow flooding, only 100-year flood depths are analyzed. However, in areas subject to alluvial fan flooding (a type of shallow flooding) analyzing the 100-year flood depths may require developing the entire flood discharge-frequency relationship (not just the 100-year flood discharge). Therefore, the extent of the hydrologic and hydraulic analyses appellants may be required to submit is determined not only by the basis of the Appeal, but also the type of flooding source and the scope of the FIS.
- Unless Appeals are based on the use of alternative models or methodologies, the hydrologic and hydraulic analyses that appellants submit must be performed with the models used for the FIS. For FISs, hydrologic analyses for riverine flooding sources are usually performed with standard engineering methodologies, such as flood-frequency analyses of stream gage data, or with computer models that are in the public domain, such as the U.S. Army Corps of Engineers (USACE) HEC-1 model or the U.S. Soil Conservation Service (SCS) TR-20 model. For FISs, hydraulic analyses for riverine flooding sources are usually performed with the USACE HEC-2 step-backwater model or a similar and widely accepted model, such as the SCS WSP-2 model, or the U.S. Geological Survey (USGS) WSPRO model.

For the analysis of alluvial fan flood hazards and the hazards associated with

coastal storm surge and wave action, including wave height and wave runup, FEMA has established or adopted special methodologies and computer models. For analyses of lacustrine and sheetflow flood hazards, FEMA uses a variety of standard engineering models and methodologies.

Appellants may request from FEMA copies of the input and output data from the model(s) used in a specific FIS or copies of other calculations or analyses performed for the FIS. (See http://www.fema.gov/plan/prevent/fhm/st_order.shtml)

- As required by Subparagraph 65.6(a)(6) of the NFIP regulations, when Appeals are based on the use of an alternative hydrologic or hydraulic model, appellants must show that several conditions have been met. First, the model used must have been reviewed and accepted for general use by a Federal agency responsible for floodplain identification or regulation or by a notable scientific body. Second, the model has been well documented (with a user's manual that includes source codes). Finally, the model must be available to all present and future parties affected by flood insurance mapping developed or amended through the use of the model.
- Although requests for revisions to floodways do not qualify as Appeals, the data on which successful Appeals are based often include new floodway analyses. Information concerning additional data that must be submitted in support of appeals that involve changes to floodways is provided in Chapter 9 of this Guide.
- Generally, when appellants are required to submit delineations of floodplain boundaries, both the 100- and 500-year floodplain boundaries must be submitted. However, if the FIS includes analyses of only the 100-year flood for the flooding source that is the subject of the Appeal,

only the 100-year floodplain boundaries must be submitted. The boundaries are to be shown on a topographic map whose scale and contour interval are sufficient to provide reasonable accuracy.

- To support Appeals based on the effects of earthfill levees or similar structures, appellants must submit the data below to show that the structural stability, operation, and maintenance requirements of Section 65.10 of the NFIP regulations have been met.
 1. Freeboard, Riverine Levee—Evidence that the levee provides a minimum of 3 feet of freeboard above the BFE and that within 100 feet of wherever the flow is constricted (e.g., a bridge), an additional 1 foot of freeboard is added to that minimum; moreover, evidence that the upstream end of the levee provides an additional 0.5 foot of freeboard added to the minimum.
 2. Freeboard, Coastal Levee—Evidence that the levee provides a minimum of 1 foot of freeboard above the height of the 1-percent wave or the maximum wave runup (whichever is greater) associated with the 100-year stillwater surge elevation, but in no case less than 2 feet of freeboard above the 100-year stillwater surge elevation.
 3. Closures—Evidence to show that all drainage structures that penetrate the levee are fitted with closure devices that are structural parts of the levee during operation and designed according to sound engineering practice.
 4. Erosion Protection—An engineering analysis that demonstrates that no appreciable erosion of the levee embankment can be expected during the 100-year flood.
 5. Stability—An engineering analysis that evaluates the stability of the levee embankment and foundation.
 6. Settlement—An engineering analysis that assesses the potential for, and

magnitude of, losses of freeboard that may result from settlement of the levee and that demonstrates that the minimum required freeboard will be maintained.

7. Operations—A formal levee operation plan.
8. Maintenance—A formal levee maintenance plan.

Exceptions to the minimum freeboard requirements cited in Items 1 and 2 for riverine and coastal levees may be approved under certain conditions. Any request for an exception must be supported by appropriate engineering analyses that show that, even with the lesser freeboard, a high level of certainty for 100-year flood protection exists.

For riverine levees, the supporting analyses must evaluate the uncertainty in the estimated BFE and must assess, at a minimum, the statistical confidence limits of the 100-year peak discharge; stage-discharge relationships for floods larger than the 100-year flood; and the sources, potential, and magnitude of debris, sediment, and ice accumulation that may affect those relationships. The analyses must also show that the levee will remain structurally stable during the base flood, when such additional loading conditions are imposed. Freeboards of less than 2 feet will not be accepted.

For coastal levees, the supporting analyses must evaluate the uncertainty in the estimated base flood loading conditions. Particular emphasis must be placed on the effects of wave attack and overtopping on the stability of the levee. Freeboards of less than 2 feet above the computed stillwater surge elevation will not be accepted.

In lieu of the data described in Items 1 through 6, appellants may submit certifications by a Federal agency with responsibility for levee design that the levee has been adequately designed and

constructed to provide 100-year flood protection.

- To support an Appeal based on the effects of a flood protection system that involves Federal funds and is under construction at the time of the Appeal, appellants must submit the data below to show that the requirements of Section 61.12 of the NFIP regulations have been met.

1. Evidence that adequate progress has been made on construction (i.e., evidence to show that 100 percent of the total cost of the complete system has been authorized, at least 60 percent of the total cost has been appropriated, at least 50 percent of the total cost has been expended, all critical features are under construction and each is 50 percent completed as measured by the expenditure of budget funds, and the community has not been responsible for any delay in the completion of the system).
2. A complete statement of all relevant facts concerning the flood protection system, including, but not limited to, supporting technical data, cost schedules, budget appropriation data, and extent of Federal funding of construction of system. The statement must include information that identifies all persons affected by the system or by the Appeal; a full and precise statement of the purpose of the system; and a detailed description of the system, including construction completion target dates.
3. True copies of all contracts, agreements, leases, instruments, and other documents related to system
4. An analysis that shows how the statement of facts (Item 2) and the documents (Item 3) bear on the evidence of adequate progress.
5. Statement of whether the flood protection system is the subject of litigation before any Federal, State,

or local court or administrative agency and, if so, the purpose of that litigation.

6. Statement of whether the community previously requested a determination concerning the same subject and, if so, the disposition of request. The procedure described above does not apply when the flood protection system under construction is being financed without Federal funds.

Appeal Resolution Procedures

The procedures that are to be followed by the appellant and FEMA in handling an Appeal are summarized in Figure 4.

By a letter to the CEO, FEMA will acknowledge receipt of all Appeals submitted. Copies of the acknowledgment letter will be sent to each appellant unless the number of appellants is so great that to do so would not be practical. In such cases, the CEO is responsible for informing appellants that FEMA has received the Appeals.

FEMA will review all Appeals and the supporting data submitted with them. If any questions or problems arise, FEMA will work with the CEO, the community official designated by the CEO, or the appellants to resolve them.

If additional supporting data are required, FEMA will request those data by letter. The letter will be sent to the CEO. A copy of the letter will be sent to the community official designated by the CEO, if appropriate, and to the individual appellant, if it is practical to do so.

To avoid delaying the resolution of Appeals, FEMA will generally allow only 30 days for the CEO to provide the requested data. If the data are not provided within the allotted time, FEMA will resolve the Appeals using the data originally submitted. If the requested data are provided within the 30-day period, FEMA will consider them before resolving the Appeals.

It should be noted here that, although the appeal period is the appropriate time to submit scientific or technical data concerning the BFEs, if a community is unable to obtain and submit

such data at that time, it may pursue a Map Revision under the provisions of Part 65 of the NFIP regulations after the FIRM has become effective.

(See <http://www.fema.gov/plan/prevent/floodplain/nfikeywords/lomr.shtm>)

If Appeals are not supported by the data that have been submitted, FEMA will inform the CEO by letter that the Appeals are denied. If Appeals are adequately supported, FEMA will revise the BFEs and any other information affected by the Appeals. If the Appeals involved the proposed BFEs shown on a new or revised FIRM, FEMA will revise the FIRM and, if necessary, the accompanying FIS report and FBFM. A letter that explains the resolution of the Appeals will be sent to the CEO. Copies of the revised reports and maps may be sent if appropriate. The community will have 30 days to review and comment on the resolution. At the end of the review period, after all comments on the Appeal resolution have been addressed, FEMA will issue a final BFE determination letter and publish the BFEs in the *Federal Register*.

If the Appeals involve BFEs proposed in a LOMR, FEMA will explain the resolution of the Appeals in a letter to the CEO. The community will have 30 days to review and comment on the resolution, after which FEMA will issue a final BFE determination letter and publish the BFEs in the *Federal Register*.

Appeals to District Court

Under the provisions of Section 67.12 of the NFIP regulations, an appellant who is aggrieved by the final determination may, within 60 days of receipt of the final determination letter, appeal the determination to the U.S. District Court for the district in which the community is located. While the Appeal is being reviewed by the U.S. District Court, the final determination will be effective, unless it is stayed by the Court for good cause shown.

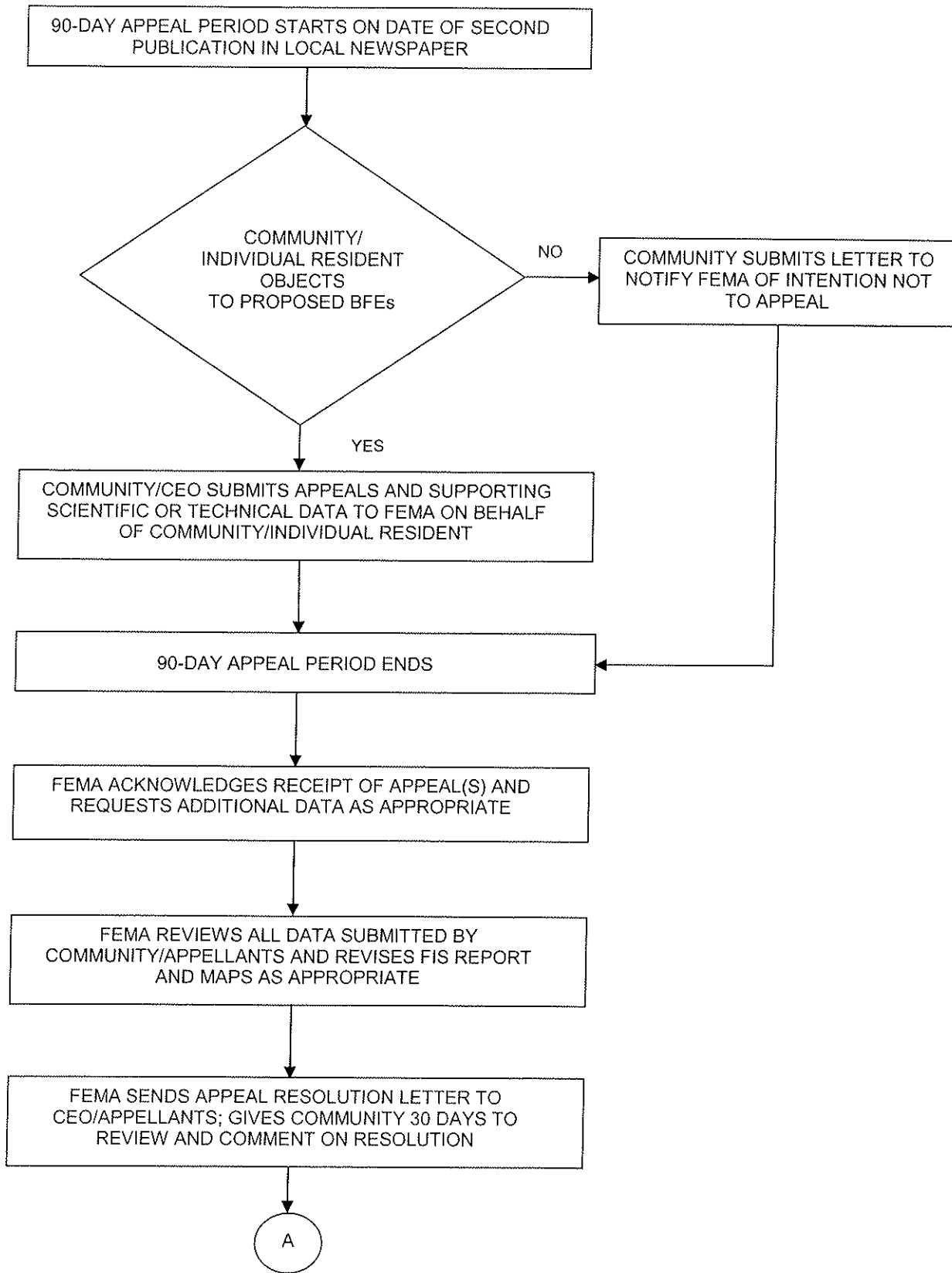


Figure 4. Procedure for Processing Appeals

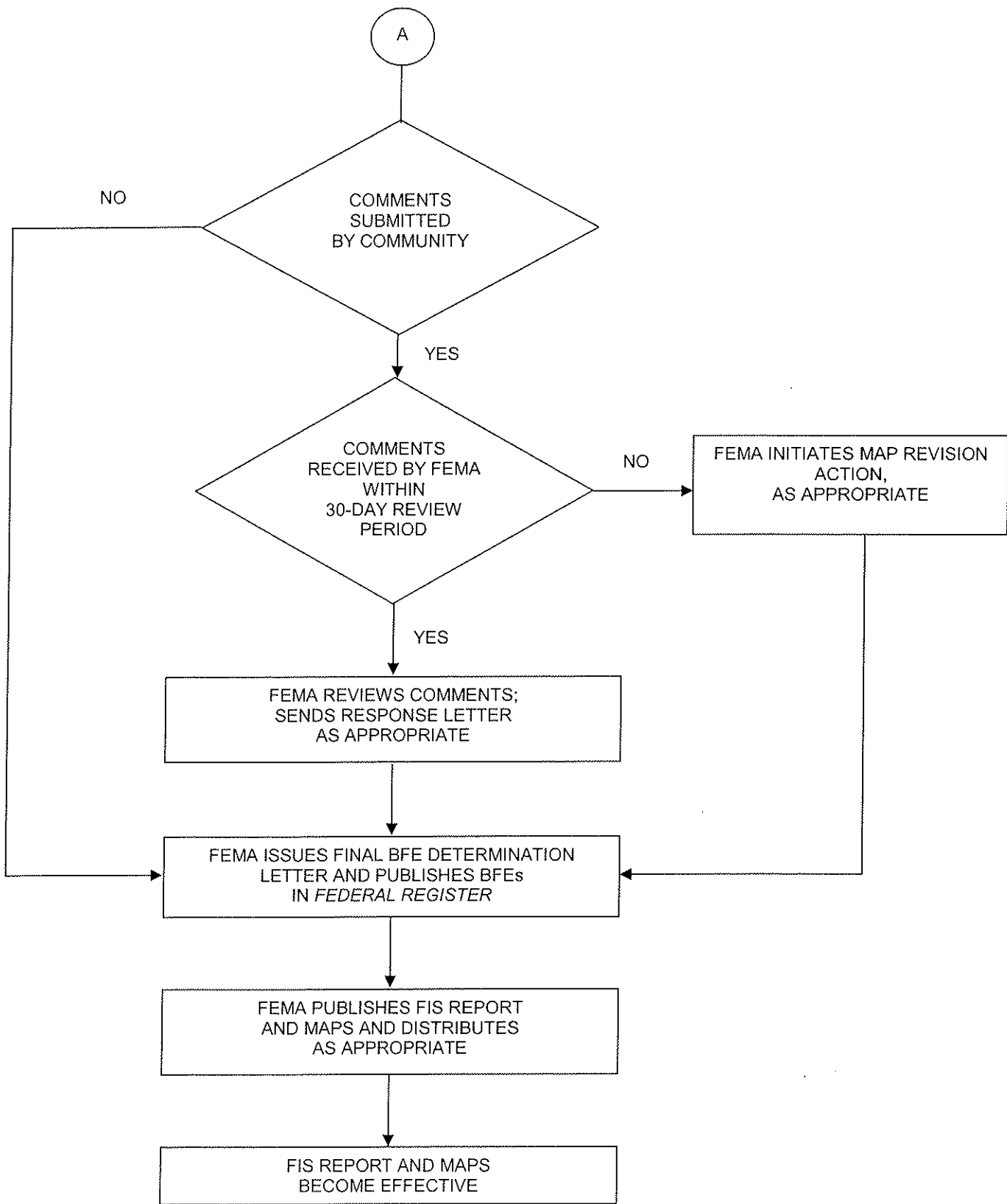


Figure 4. Procedure for Processing Appeals (Cont'd)

Protests

During the formal 90-day appeal period, a community official or an individual property owner may wish to object to information shown on the FIRM, FBFM, or FIS report. If the objection does not involve the proposed BFEs, it does not, according to Part 67 of the NFIP regulations, constitute an Appeal. Such objections are called Protests.

Like Appeals, Protests should not be submitted directly to FEMA by individual property owners. They are to be submitted to the CEO or a community official designated by the CEO. The CEO or designated community official should review the Protests and, when forwarding them to FEMA, should state whether the community supports them. Protests should be sent to the FEMA Headquarters office at the following address:

Engineering Management Branch
Mitigation Directorate
Federal Emergency Management Agency
500 C Street, SW.
Washington, DC 20472

Protests will generally involve changes to one of the following:

- Floodplain boundary delineations
- Corporate limits
- Roads and road name

The various types of Protests and the data that must be submitted to support them are discussed in the following paragraphs.

Changes to Floodplain Boundaries

Flooding Sources Studied by Detailed Methods

Usually, detailed floodplain boundaries are delineated using topographic maps and the BFEs resulting from the hydraulic analysis performed for the FIS. If topographic maps or other ground elevation data are submitted that are of greater detail than those used by FEMA or that show more recent topographic conditions, FEMA will use them to revise the floodplain boundaries shown on the FIRM and FBFM.

All maps and other supporting data submitted must be certified by a registered professional engineer or a licensed land surveyor and must reflect existing conditions. Maps prepared by an authoritative source, such as the USACE, USGS, U.S. Bureau of Reclamation, or a State department of highways and transportation, are acceptable without certification as long as the sources and dates of the maps are identified.

Flooding Sources Studied by Approximate Methods

Usually, approximate floodplain boundaries are delineated with the best available data, including flood maps published by other Federal agencies, information on past floods, and simplified hydrologic and hydraulic analyses. If more detailed data or analyses are submitted, FEMA will use them to revise the floodplain boundaries shown on the FIRM and FBFM. Such data and analyses would include the following:

- Published flood maps that are more recent or more detailed than those used by FEMA
- Analyses that are more detailed than those performed by FEMA or that are based on better data than those used by FEMA

All data and analyses submitted must be certified by a registered professional engineer or licensed land surveyor.

Changes to Corporate Limits

The corporate limits shown on NFIP maps are taken from community maps obtained by FEMA Contractors during the course of processing FISs, RFISs, or PMRs. When changes to the corporate limits shown on the NFIP map are necessary, an up-to-date community map should be submitted. FEMA may use the community map to revise the corporate limits shown on the FIRM and FBFM, or will explain to the CEO why no changes were made.

Changes to Roads and Road Names

In general, FEMA shows on its maps all roads that are in or adjacent to floodplains. If maps are submitted that show new or revised

information concerning the locations and names of roads in or adjacent to floodplains, FEMA will revise the FIRM and FBFM as appropriate.

Protest Resolution Procedures

The steps that are followed in processing Protests are shown in Figure 5. Changes that must be made to the FIRM, FBFM, and/or FIS report as a result of Protests are usually incorporated at the time the maps and report are printed. Generally, FEMA will explain the resolution of any Protests that have been submitted in the letter that informs the CEO of the final BFE determination. However, when necessary to clearly explain the revisions to be made, FEMA may issue a separate Protest resolution letter and/or provide the community with revised copies of the affected FIRM and FBFM panels.

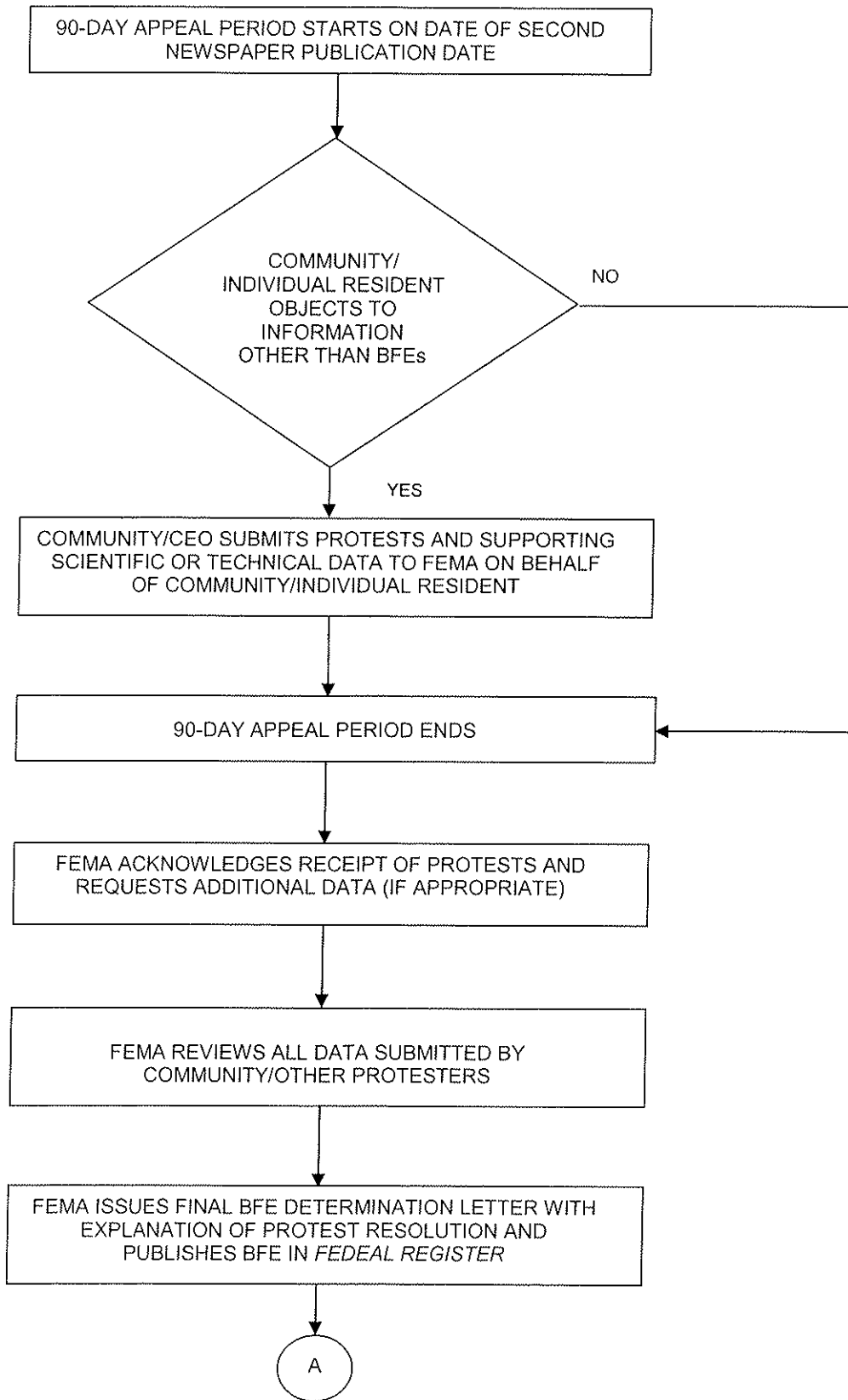


Figure 5. Procedure for Processing Protests

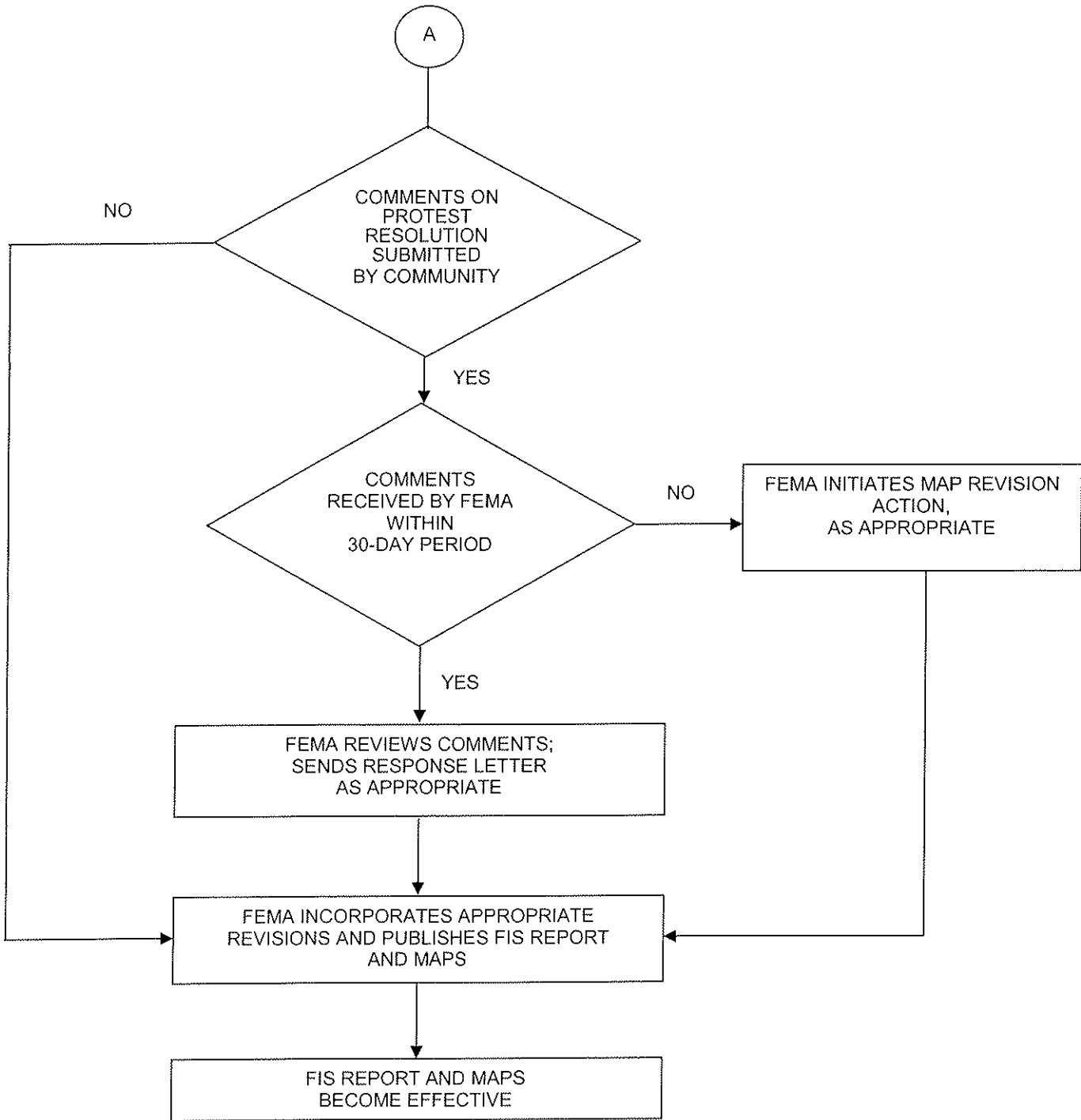


Figure 5. Procedure for Processing Protests (Cont'd)

