

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 30, 2002.

**Anthony S. Lowe,**  
Administrator, Federal Insurance and  
Mitigation Administration.

[FR Doc. 02-22823 Filed 9-6-02; 8:45 am]

BILLING CODE 6718-04-P

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY**

**44 CFR Part 67**

**Final Flood Elevation Determinations**

**AGENCY:** Federal Emergency  
Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

**ADDRESSES:** The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3461, or (e-mail) [matt.miller@fema.gov](mailto:matt.miller@fema.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed

determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR part 67**

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

Accordingly, 44 CFR part 67 is amended as follows:

**PART 67—[AMENDED]**

1. The authority citation for Part 67 continues to read 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.

**§ 67.11 [Amended]**

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
<b>CONNECTICUT</b>	
<b>New Haven (Town), New Haven County (FEMA Docket No. D-7524)</b>	
<i>Maloney Brook:</i> Approximately 10 feet upstream of the confluence with Farm River .....	*36
Approximately 50 feet upstream of Foxon Hill Road	*105
<b>Maps available for inspection</b> at the East Haven Public Works Building, 461 North High Street, East Haven, Connecticut.	
<b>ILLINOIS</b>	
<b>Champaign County (Unincorporated Areas) (FEMA Docket No. D-7528)</b>	
<i>Sangamon River:</i> Approximately 1,000 feet downstream from the Township Road 2000 North (Shively) bridge .....	*676
At Lake of the Woods covered bridge .....	*689
<b>Maps available for inspection</b> at the Champaign County Department of Planning and Zoning, Brookens Administrative Center, 1776 East Washington Street, Urbana, Illinois.	
<b>Elburn (Village), Kane County (FEMA Docket No. D-7516)</b>	
<i>Blackberry Creek:</i> At the confluence of Blackberry Creek Tributary D ....	*741
Approximately 1,050 feet upstream of Hughes Road ....	*747
<i>Blackberry Creek Tributary D:</i> Approximately 600 feet upstream of confluence with Blackberry Creek .....	*742
Approximately 2,550 feet downstream of Keslinger Road .....	*799

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
<b>Maps available for inspection</b> at the Elburn Village Hall, 301 East North Street, Elburn, Illinois.		Just downstream of U.S. Route 20 .....	*889	<b>Maps available for inspection</b> at the Mahomet Village Hall, 503 East Main Street, Mahomet, Illinois.	
<b>Elgin (City), Kane County (FEMA Docket No. D-7516)</b>		<i>Indian Creek:</i>		<b>Montgomery (Village), Kane County (FEMA Docket No. D-7516)</b>	
<i>Sandy Creek:</i> At Randall Road .....	*826	Approximately 0.41 mile upstream of Wood Street .....	*676	<i>Blackberry Creek Tributary G:</i>	
Approximately 325 feet upstream of Randall Road .....	*826	At downstream side of East-West Tollway .....	*717	Approximately 2,050 feet downstream of Aucutt Road .....	*661
<i>Tyler Creek:</i>		<i>Indian Creek Tributary B:</i>		Approximately 550 feet downstream of Jericho Road .....	*666
Approximately 500 feet upstream of confluence with Fox River .....	*715	Approximately 0.61 mile upstream of confluence with Indian Creek .....	*716	<i>Blackberry Creek:</i>	
Approximately 120 feet downstream of Soo Line Railroad .....	*839	<i>South Tributary:</i>		Approximately 0.4 mile downstream of Jericho Road .....	*664
<b>Maps available for inspection</b> at the City of Elgin Public Works Department, Engineering Division, 150 Dexter Court, Elgin, Illinois.		At confluence with Indian Creek .....	*684	At Jericho Road .....	*666
<b>Gilberts (Village), Kane County (FEMA Docket No. D-7516)</b>		Approximately 680 feet upstream of confluence with Indian Creek .....	*688	<b>Maps available for inspection</b> at the Montgomery Village Clerk's office, 1300 South Broadway, Montgomery County, Illinois.	
<i>Tyler Creek:</i>		<i>Welch Creek:</i>		<b>Pingree Grove (Village), Kane County (FEMA Docket No. D-7516)</b>	
Just upstream of Big Timber Road .....	*867	Approximately 1,110 feet downstream of Fay's Lane	*680	<i>Pingree Creek:</i>	
Approximately 200 feet downstream of McCormack Road .....	*866	Just upstream of Burlington Northern Railroad .....	*692	Approximately 1,000 feet upstream of Highland Avenue	*901
<b>Maps available for inspection</b> at the Gilberts Village Hall, 87 Galligan Road, Gilberts, Illinois.		<i>Welch Creek Tributary 1:</i>		Approximately 800 feet upstream of Soo Line Railroad .....	*902
<b>Kane County (Unincorporated Areas) (FEMA Docket No. D-7516)</b>		Just upstream of Aurora Municipal Airport .....	*693	<b>Maps available for inspection</b> at the Pingree Groving Village Hall, 14N042 Reinking Road, Hampshire, Illinois.	
<i>Blackberry Creek Tributary F:</i>		Approximately 2,600 feet upstream of Aurora Municipal Airport .....	*694	<b>Sugar Grove (Village), Kane County (FEMA Docket No. D-7516)</b>	
Approximately 0.6 mile upstream of confluence with Blackberry Creek Tributary B .....	*703	<i>Blackberry Creek Tributary H:</i>		<i>Blackberry Creek:</i>	
Approximately 250 feet downstream of Bliss Road .....	*727	Approximately 750 feet southwest of Lake View Court and Lake View Drive intersection .....	*670	Approximately 1,050 feet upstream of Densmore Road	*678
<i>Main Street Ditch:</i>		At confluence with Indian Creek .....	*716	Approximately 1,800 feet upstream of Bliss Road .....	*690
At confluence with Blackberry Creek Tributary F .....	*707	At county boundary .....	*720	<i>Blackberry Creek Tributary E:</i>	
Approximately 130 feet upstream of Main Street .....	*709	<b>Maps available for inspection</b> at the Kane County Water Resources Department, Kane County Government Center Building "A," 719 Batavia Avenue, Geneva, Illinois.		At confluence with Blackberry Creek .....	*680
<i>Tyler Creek:</i>		<b>Lily Lake (Village), Kane County (FEMA Docket No. D-7516)</b>		At Mankes Road .....	*680
Approximately 375 feet downstream of Eagle Road East .....	*793	<i>Ferson Creek:</i>		<b>Maps available for inspection</b> at the Sugar Grove Village Office, 10 Municipal Drive, Sugar Grove, Illinois.	
Approximately 200 feet upstream of Illinois Route 72	*898	Approximately 100 feet downstream of Great Western Trail Railroad .....	*862	<b>MAINE</b>	
<i>Pingree Creek:</i>		Just downstream of Route 64	*872	<b>Wells (Town), York County (FEMA Docket No. D-7504)</b>	
At confluence with Tyler Creek .....	*893	<b>Maps available for inspection</b> at the Lily Lake Village Hall, 43W680 Empire Road, St. Charles, Illinois.		<i>Atlantic Ocean:</i>	
Approximately 325 feet upstream of U.S. Route 20 .....	*906	<i>Sangamon River:</i>		Approximately 300 feet east of the intersection of Bourne Avenue and Ocean Avenue .....	*20
<i>Mastadon Lake:</i>		Approximately 800 feet downstream of downstream corporate limits .....	*677	Approximately 100 feet west of the intersection of Mile Road and Webhannet Drive .....	*10
Approximately 300 feet southeast of the intersection of Parker Avenue and Hinman Street .....	*662	Approximately 1,800 feet downstream of upstream corporate limits .....	*689		
<i>Sandy Creek:</i>					
Approximately 130 feet downstream of Randall Road .....	*821				

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
<p>Approximately 50 feet northwest of the intersection of Seaview Drive and Webhannet Drive ..... #1</p> <p>Approximately 100 feet southeast of the intersection of Drakes Island Road and Drakes Island Beach Road ..... #2</p> <p>At intersection of Furbush Road and Ocean Avenue ..... #1</p> <p>Approximately 200 feet southeast of the intersection of Webhannet Drive and Folsom Street ..... #2</p> <p><i>Depot Brook:</i> Approximately 0.38 mile downstream of U.S. Route 1 ..... *10</p> <p>Approximately 0.25 mile downstream of U.S. Route 1 ..... *10</p> <p><i>Little River:</i> Approximately 0.62 mile upstream of mouth ..... *10</p> <p>At confluence of Merriland River ..... *10</p> <p><i>Merriland River:</i> At confluence with the Little River ..... *10</p> <p>Approximately 125 feet downstream of Lords Road ..... *10</p> <p><i>Ogunquit River:</i> At confluence of Stevens Brook ..... *10</p> <p>Approximately 260 feet downstream of U.S. Route 1 ..... *10</p> <p><i>Stevens Brook:</i> Approximately 2.00 miles above confluence with Ogunquit River ..... *10</p> <p>Approximately 0.31 mile downstream of U.S. Route 1 ..... *10</p> <p><i>Webhannet River:</i> Approximately 0.72 mile downstream of U.S. Route 1 ..... *10</p> <p>Approximately 215 feet downstream of U.S. Route 1 ..... *10</p> <p><b>Maps available for inspection</b> at the Wells Town Hall, Planning &amp; Code Enforcement Office, 208 Sanford Road, Wells, Maine.</p>		<p><b>Maps available for inspection</b> at the Worcester Environmental/Land Use Planner's Office, 25 Meade Street, Worcester, Massachusetts.</p> <p style="text-align: center;"><b>NEW JERSEY</b></p> <p><b>Florham Park (Borough), Morris County (FEMA Docket No. D-7524)</b></p> <p><i>Spring Garden Brook:</i> Approximately 200 feet downstream of Brooklake Road ..... *175</p> <p>At the upstream corporate limits ..... *182</p> <p><b>Maps available for inspection</b> at the Florham Park Municipal Building, Public Works Office, 111 Ridgedale Avenue, Florham Park, New Jersey.</p> <p style="text-align: center;"><b>Rahway (City), Union County (FEMA Docket No. D-7524)</b></p> <p><i>Rahway River:</i> At the downstream corporate limits ..... *9</p> <p>Approximately 30 feet upstream of Monroe Street ... *11</p> <p><i>South Branch:</i> At the confluence with the Rahway River ..... *11</p> <p>Approximately 528 feet downstream of East Inman Avenue ..... *11</p> <p><b>Maps available for inspection</b> at the Rahway City Hall, Department of Engineering, City Hall Plaza, Rahway, New Jersey.</p> <p style="text-align: center;"><b>Weymouth (Township), Atlantic County (FEMA Docket No. D-7528)</b></p> <p><i>Tuckahoe River:</i> At the downstream corporate limits ..... *56</p> <p>At the upstream corporate limits ..... *77</p> <p><i>Great Egg Harbor River:</i> At the confluence of the South River ..... *9</p> <p>At the upstream corporate limits ..... *9</p> <p><i>South River:</i> At Walkers Forge Avenue .... *16</p> <p>Approximately 500 feet upstream of upstream corporate limits ..... *38</p> <p><b>Maps available for inspection</b> at the Weymouth Township Hall, 45 South Jersey Avenue, Dorothy, New Jersey.</p>		<p>Entire shoreline of Findley Lake ..... *1,423</p> <p><b>Maps available for inspection</b> at Mina Town Community Center, 2883 North Road, Findley Lake, New York.</p> <p style="text-align: center;"><b>Sardinia (Town), Erie County (FEMA Docket No. D-7528)</b></p> <p><i>Hosmer Brook:</i> Approximately 0.83 mile downstream of State Route 39 ..... *1,320</p> <p>Approximately 80 feet upstream of Genesee Road .. *1,408</p> <p><b>Maps available for inspection</b> at the Sardinia Community Center, 12320 Savage Road, Sardinia, New York.</p> <p style="text-align: center;"><b>TENNESSEE</b></p> <p style="text-align: center;"><b>Fairview (City), Williamson County (FEMA Docket No. D-7524)</b></p> <p><i>Hunting Camp Creek:</i> At upstream side of Fernvale Road ..... *703</p> <p>A point approximately 0.75 mile upstream of Chester Road ..... *822</p> <p><i>Hunting Camp Creek Tributary No. 2:</i> At Fernvale Road ..... *701</p> <p>Approximately 30 feet upstream of Chester Road .... *794</p> <p><i>Hunting Camp Creek Tributary No. 3:</i> At Fernvale Road ..... *701</p> <p>Approximately 275 feet upstream of State Route 100 ..... *804</p> <p><i>Hunting Camp Creek Tributary No. 4:</i> At the confluence with Hunting Camp Creek Tributary No. 3 ..... *721</p> <p>Approximately 200 feet upstream of Chester Road .... *798</p> <p><i>Hunting Camp Creek Tributary No. 5:</i> At the confluence with Hunting Camp Creek Tributary No. 2 ..... *790</p> <p>Approximately 20 feet upstream of Chester Road .... *794</p> <p><b>Maps available for inspection</b> at the Fairview City Hall, 1874 Fairview Boulevard, Fairview, Tennessee.</p> <p style="text-align: center;"><b>Franklin (City), Williamson County (FEMA Docket No. D-7283)</b></p> <p><i>Watson Branch:</i> Approximately 1,625 feet upstream of confluence with Harpeth River ..... *644</p> <p>Approximately 75 feet downstream of Murfreesboro Pike ..... *699</p> <p><i>South Prong Creek:</i></p>	
<b>MASSACHUSETTS</b>		<b>NEW YORK</b>			
<p><b>Worcester (City), Worcester County (FEMA Docket No. D-7524)</b></p> <p><i>Broad Meadow Brook:</i> Approximately 240 feet downstream of U.S. Highway 20 ..... *450</p> <p>Approximately 1.6 miles upstream of U.S. Highway 20 ..... *484</p> <p><i>Beaver Brook:</i> Approximately 175 feet downstream of Mill Street bridge ..... *480</p> <p>At Maywood Street ..... *481</p>		<p><b>Mina (Town), Chautauqua County (FEMA Docket No. D-7524)</b></p> <p><i>Findley Lake:</i></p>			

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Approximately 75 feet upstream of confluence with Spencer Creek .....	*663	At a point approximately 455 feet upstream of Sanbyrn Drive .....	*599	<i>Hunting Camp Creek Tributary No. 3:</i>	
Approximately 1,100 feet upstream of Liberty Pike .....	*729	At a point approximately 1.26 miles upstream of Dilton-Mankin Road .....	*656	At the confluence with Hunting Camp Creek .....	*681
<i>Unnamed Tributary to South Prong Creek:</i>		<i>West Fork Stones River:</i>		At upstream side of Fernvale Road .....	*702
At confluence with South Prong Creek .....	*682	At a point approximately 0.35 mile upstream of Sulphur Springs Road .....	*525	<i>Leipers Fork:</i>	
Approximately 715 feet upstream of confluence with South Prong Creek .....	*689	At a point approximately 1.28 miles upstream of Stones River Road .....	*675	Just upstream of Bailey Road	*670
<b>Maps available for inspection at the Franklin City Hall, Code Department, 109 Third Avenue South, Franklin, Tennessee.</b>		<i>Sinking Creek:</i>		At downstream side of Bear Creek Road .....	*727
<b>Murfreesboro (City), Rutherford County (FEMA Docket No. D-7524)</b>		At the confluence with West Fork Stones River .....	*547	<i>East Fork Creek:</i>	
<i>Lytle Creek:</i>		Approximately 250 feet downstream of Thompson Lane .....	*547	At county boundary .....	*587
At the confluence with West Fork Stones River .....	*573	<i>Lees Spring Branch:</i>		Approximately 900 feet upstream of most upstream crossing of Big East Fork Road .....	*692
At a point approximately 200 feet upstream of Country Club Drive .....	*602	At the confluence with Lytle Creek .....	*620	<i>Beech Creek:</i>	
<i>Sinking Creek:</i>		Approximately 500 feet upstream of confluence with Lytle Creek .....	*620	Confluence with Little Harpeth River .....	*600
At the confluence with West Fork Stones River .....	*547	<i>Unnamed Tributary of West Fork Stones River:</i>		Approximately 700 feet downstream of Murry Lane	*649
Approximately 0.6 mile upstream of Thompson Lane .....	*547	Approximately 0.54 mile upstream of confluence with West Fork Stones River ....	*586	<i>Trace Creek:</i>	
<i>Unnamed Tributary of West Fork Stones River:</i>		Approximately 106 feet upstream of State Highway 99 .....	*588	Approximately 50 feet downstream of county boundary	*569
At the confluence with West Fork Stones River .....	*586	<i>Todds Lake:</i>		Approximately 100 feet downstream of Natchez Bend Road .....	*642
Approximately 0.54 mile upstream of confluence with West Fork Stones River ....	*586	Entire shoreline within the community .....	*613	<i>Mill Creek:</i>	
<i>West Fork Stones River:</i>		<i>Middle Fork Stones River:</i>		Approximately 520 feet upstream of Concord Road ...	*557
Approximately 0.7 mile upstream of I-840 .....	*543	At the confluence with West Fork Stones River .....	*595	Approximately 264 feet upstream of Rocky Fork Road .....	*612
At the confluence of Middle Fork Stones River .....	*595	Approximately 0.52 mile upstream of confluence with West Fork Stones River ....	*596	<i>Owl Creek:</i>	
<i>Todds Lake:</i>		<b>Maps available for inspection at the Rutherford County Planning Department, #1 Southside Square, Murfreesboro, Tennessee.</b>		Approximately 0.46 mile upstream of Ragsdale Road	*650
Entire shoreline within the community .....	*613	<b>Williamson County (Unincorporated Areas) (FEMA Docket Nos. D-7283 and D-7524)</b>		At downstream side of Split Log Road .....	*677
<i>Sink Hole #1:</i>		<i>Brush Creek:</i>		<i>Unnamed Tributary of Mill Creek:</i>	
Entire perimeter of the sink hole .....	*607	At county boundary .....	*548	Approximately 100 feet upstream of confluence with Mill Creek .....	*600
<i>Middle Fork Stones River:</i>		Approximately 1.57 miles upstream of Old Brush Creek Road .....	*676	Approximately 1,150 feet upstream of confluence with Mill Creek .....	*603
At the confluence with West Fork Stones River .....	*595	<i>Harrison Branch Creek:</i>		<i>Watson Branch:</i>	
Approximately 0.5 2 mile upstream of confluence with West Fork Stones River ....	*596	Confluence with Brush Creek	*556	Approximately 275 feet downstream of Murfreesboro Road .....	*698
<i>Sink Hole #2:</i>		Approximately 125 feet downstream of unnamed road .....	*668	Approximately 75 feet downstream of Murfreesboro Road .....	*699
Entire perimeter of the sink hole .....	*595	<i>Hunting Camp Creek:</i>		<b>Maps available for inspection at the Williamson County Complex, Planning Department, 1320 West Main Street, Suite 125, Franklin, Tennessee.</b>	
<i>Sink Hole #3:</i>		Approximately 55 feet downstream of the confluence with Hunting Camp Creek Tributary No. 3 .....	*680	<b>VIRGINIA</b>	
Entire perimeter of the sink hole .....	*585	At upstream side of Fernvale Road .....	*703	<b>Grottoes (Town), Augusta and Rockingham Counties (FEMA Docket No. D-7524)</b>	
<b>Maps available for inspection at the City of Murfreesboro Planning Department, City Hall, 111 West Vine Street, Murfreesboro, Tennessee.</b>		<i>Hunting Camp Creek Tributary No. 2:</i>		<i>Miller Run:</i>	
<b>Rutherford County (Unincorporated Areas) (FEMA Docket No. D-7524)</b>		At the confluence with Hunting Camp Creek .....	*684	Approximately 160 feet downstream of 21st Street	*1,090
<i>Lytle Creek:</i>		At Fernvale Road .....	*701	Approximately 60 feet upstream of Cary Street .....	*1,152

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
<b>Maps available for inspection</b> at the Grottoes Town Office, 601 Dogwood Avenue, Grottoes, Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: August 30, 2002.

**Anthony S. Lowe,**

*Administrator, Federal Insurance and Mitigation Administration.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 68

[CC Docket No. 99-216, FCC 02-103]

### 2000 Biennial Regulatory Review of Adopting Technical Criteria and Approving Terminal Equipment

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; reconsideration.

**SUMMARY:** In this document, the Commission addresses requests to reconsider portions of the Commission's *Report and Order* published Wednesday, January 24, 2001 (66 FR 7579) that modified its rules governing the connection of terminal equipment to the public switched telephone network to streamline the standards development and approval processes for terminal equipment.

**DATES:** Effective October 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** John Hays, Industry Analysis and Technology Division, Wireline Competition Bureau, voice 202-418-0875, fax 202-418-0520.

**SUPPLEMENTARY INFORMATION:** In the Order on Reconsideration, the Commission addressed several issues raised in *ex parte* comments or in petitions for reconsideration and subsequent pleadings.

The Commission clarified, pursuant to a request by the Administrative Council for Terminal Attachments (Administrative Council) seeking clarification of § 68.602(c), that a formal contract is not required between the Administrative Council and its sponsors. In establishing § 68.602(c), the Commission intended to ensure that the nature of the arrangement between the

Administrative Council and its sponsor(s) is subject to public disclosure. The Administrative Council states that it will develop a statement of work or similar document pertaining to its relationship with its sponsors, and make the document available online and from the secretariat upon request. The Commission found that this would be sufficient for purposes of compliance with § 68.602(c).

The Commission denied petitions to reconsider the supplier's declaration of conformity (SDoC) procedure established in the *Report and Order*, stating that the Commission has long permitted testing of part 68 equipment by non-accredited laboratories, with few documented problems, and has required laboratory accreditation only in instances where the test procedures are sufficiently complex so as to raise concerns about the tests being performed properly. The Commission found no such concerns with the tests required for part 68 terminal equipment. Moreover, the Commission stated that commenters' concerns that use of the SDoC process will lead to non-compliant equipment are unfounded.

The Commission granted Industry Canada's request to delete the requirement in § 68.321 of the rules that responsible parties be located within the United States. The Commission amended § 68.321 to specify that responsible parties must designate an agent for service of process that maintains an office within the United States.

The Commission denied the petition by the American National Standards Institute to accept standards development by the Canvass method of consensus for technical criteria, but granted the American National Standards Institute petition as to appeals procedures. The Commission found that the Organization and Standards Committee methods of development provide additional assurance of public participation, similar to that provided in a rulemaking proceeding, by allowing open participation. Thus, the Commission intends to ensure that interested parties have a voice in drafting the standards at an early stage in the standards development process. Notwithstanding the American National Standards Institute's finding that the Canvassing method ultimately provides a similar level of due process afforded by the other two methods, the Commission found that for the purpose of developing technical criteria, it is essential for all interested parties to have an opportunity to enjoy full participation

in the standards development process from the outset of that process.

In addition, the Commission clarified on its own motion that after technical criteria are published, and the 30-day public notice period passes, technical criteria will be deemed to be presumptively valid and remain so during appeal, unless they are subsequently invalidated by the standards development organization, the Administrative Council, the American National Standards Institute, or the Commission.

The Commission granted the requests of several petitioners to eliminate the provisions in §§ 68.354(d) and 68.612 requiring the manufacturer(s) of terminal equipment to be identified on the label and in the database of approved terminal equipment. The Commission found that current business practices often are that the licensing entity, whose name is on the product, contracts with several manufacturers to produce the equipment. In such case the relevant entity is the licensing party, not the manufacturer. These contract manufacturers are numerous and may change frequently and, perhaps most importantly, their identities are proprietary information for the licensing entity.

The Commission also denied petitions to retain the technical rules for type B surge requirements. The Commission stated that the privatized system is the most efficient and responsive method for addressing future updates to the technical criteria for terminal equipment. It found that BellSouth's concerns, that the Type B surge requirements would be eliminated under the privatized system, are unfounded. The Commission pointed out that the Administrative Council has no discretion unilaterally to remove the Type B surge requirements. Standards development organizations that meet the requirements of the *Report and Order* are the only entities that may formulate changes to, or ultimately eliminate, technical criteria. Such standards development organizations must permit open participation in the development or amendment of technical requirements, and they must follow consensus procedures. The Administrative Council merely publishes these criteria after ensuring the Commission's requirements were met. Moreover, the Commission retains *de novo* review, appeals and enforcement jurisdiction in the event of an appeal of technical criteria.

On its own motion, the Commission amended § 68.162(e)(5)(i) to clarify that the Administrative Council is responsible for publishing technical