

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Approximately 0.8 mile downstream of CSX Transportation .....	•173
Approximately 100 feet upstream of Interstate Route 85 .....	•237
<b>Montgomery County (Unincorporated Areas)</b> <b>Maps available for inspection</b> at the Montgomery County Engineering Department, 3152 Rolling Road Circle, Montgomery, Alabama.	
<b>City of Montgomery</b> <b>Maps available for inspection</b> at the Montgomery City Hall, 103 North Perry, Montgomery, Alabama.	
<b>NORTH CAROLINA</b> <b>Hyde County (Unincorporated Areas) (FEMA Docket No. D-7540)</b> <i>Pungo River Canal:</i> Approximately 2.5 miles upstream of Shallop Creek ... •7 Approximately 1,100 feet upstream of Tiffany Trail ..... •10 <b>Hyde County (Unincorporated Areas)</b> <b>Maps available for inspection</b> at the Hyde County Inspection Department, 1129 Main Street, Swan Quarter, North Carolina.	

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

Dated: April 23, 2003.

**Anthony S. Lowe,**

*Mitigation Division Director, Emergency Preparedness and Response Directorate.*

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

#### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**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:** Mary Jean Pajak, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2831.

**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 Mitigation Division Director of the Emergency Preparedness and Response Directorate 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>PENNSYLVANIA</b>	
<b>Tinicum (Township), Bucks County (FEMA Docket No. D-7528)</b>	
<i>Delaware River:</i>	
Approximately 0.25 mile upstream of Uhlerstown Hill Road .....	*127
Approximately 1.17 miles downstream of Upper Black Eddy Bridge .....	*134
<i>Delaware River Overland Flow:</i>	
At confluence with the Delaware River .....	*128
At divergence from the Delaware River .....	*133
<b>Maps available for inspection at the Tinicum Municipal Building, 163 Municipal Road, Pipersville, Pennsylvania.</b>	
<b>VIRGINIA</b>	
<b>Fairfax City (Independent City) (FEMA Docket No. D-7528)</b>	
<i>Accotink Creek:</i>	
At the downstream corporate limits .....	*289
Approximately 50 feet upstream of Poplar Street .....	*397
<i>Dale Lestina Tributary:</i>	
At the confluence with North Fork Accotink Creek .....	*313
Approximately 500 feet upstream of Plantation Parkway .....	*344
<i>Daniels Run:</i>	
At the confluence with Accotink Creek .....	*296
Approximately 1,030 feet upstream of Sager Avenue ...	*406
<i>Draper Drive Tributary:</i>	
Approximately 750 feet upstream of confluence with Accotink Creek .....	*307
Approximately 920 feet upstream of the confluence with Accotink Creek .....	*311
<i>Little River Hills Tributary:</i>	
Approximately 150 feet upstream of the confluence with Daniels Run .....	*328
Approximately 1,460 feet upstream of Ashby Road .....	*379
<i>Mosby Woods Tributary:</i>	
At the confluence with North Fork Accotink Creek .....	*332
Approximately 1,940 feet upstream of confluence with North Fork Accotink Creek .....	*342
<i>North Fork Accotink Creek:</i>	
At the confluence with Accotink Creek .....	*313
Approximately 800 feet upstream of Howerton Avenue .....	*382
<i>Ranger Road Tributary:</i>	
At the confluence with Accotink Creek .....	*312
Approximately 260 feet upstream of Ranger Road .....	*314
<i>Tusico Branch:</i>	
At the confluence with Accotink Creek .....	*362

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Approximately 570 feet upstream of Keith Avenue .....	*373
<i>Tusico Branch (area of shallow flooding):</i>	
Approximately 570 feet upstream of Keith Avenue .....	#2
Approximately 625 feet upstream of Scott Drive .....	#2
<b>Maps available for inspection at the Fairfax City Hall, 10455 Armstrong Street, Room 204, Fairfax, Virginia.</b>	

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

Dated: April 23, 2003.

**Anthony S. Lowe,**

*Mitigation Division Director, Emergency Preparedness and Response Directorate.*

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## NATIONAL TRANSPORTATION SAFETY BOARD

### 49 CFR Part 821

#### Rules of Practice Governing Board Review of Federal Aviation Administration Emergency Determinations in Air Safety Enforcement Proceedings

**AGENCY:** National Transportation Safety Board.

**ACTION:** Final rule.

**SUMMARY:** On July 11, 2000, the Board published, at 65 FR 42637, interim rules to implement Section 716 of the Aviation Investment and Reform Act for the 21st Century. That provision of law conferred on the Board the authority to review determinations by the Administrator of the Federal Aviation Administration (FAA) that an emergency exists which warrants the immediate effectiveness of an order amending, modifying, suspending or revoking certain FAA-issued certificates. The only significant changes effected by the final rule involve the standard to be applied by the Board's administrative law judges in reviewing emergency determinations, and the adoption of a procedure to enhance the prospective value of the law judges' decisions by reflecting the Board's opinion on them.

**DATES:** These final rules are effective on June 30, 2003.

#### FOR FURTHER INFORMATION CONTACT:

David E. Bass, Deputy General Counsel, (202) 314-6080.

**SUPPLEMENTARY INFORMATION:** Section 716 of the Aviation Investment and Reform Act for the 21st Century, Public Law 106-181, enacted April 15, 2000, was codified at 49 U.S.C. 44709 (e)(3).

#### Final Rules

*Board Review of Law Judges' Decisions (see § 821.54(f)).* The interim rules currently in effect delegated to the Board's administrative law judges the authority to review emergency determinations of the Administrator, without right of appeal to the Board. We have decided to extend that delegation indefinitely, as our experience thus far does not suggest a need for further review, or review by the Board itself instead of a law judge, and a multi-layered process would be difficult, if possible at all, to administer in the statutory 5-day period within which the Board must act on a petition. We, therefore, will not, as recommended by some commenters, institute a procedure for review, at the Board level, of the law judges' decisions on petitions. Nevertheless, we do find merit in the concern that a lack of Board review could adversely affect uniformity among the decisions of our law judges on common issues and deprive future litigants (and the law judges) the guidance of precedent. Accordingly, we will, henceforth, undertake to register, in those cases that are appealed to the Board for a decision on the merits of an emergency or other immediately effective order of the Administrator, our concurrence or disagreement with the law judge's ruling on a petition, whenever, in our judgment and if time permits—it would be beneficial to address the issues raised. When we differ with a ruling, or agree for different reasons, we will provide our views.

*Standard of Review (see § 821.54(e)).* Several commenters contend that the "abuse of discretion" standard established in the interim rules is inappropriate and should be discarded in favor of the "preponderance of the evidence" standard employed in our adjudications on the merits of the Administrator's charges. Related to this view is the belief that the Administrator—and not the affected certificate holder—should bear the burden of proof in the review. Although we originally believed that the approach taken in an analogous judicial setting represented a model we should emulate, the Board has come to the view that the "abuse of discretion" standard, commonly applied by the courts in