

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

Dated: September 30, 2002.

**Anthony S. Lowe,**

*Administrator, Federal Insurance and Mitigation Administration.*

[FR Doc. 02-26219 Filed 10-15-02; 8:45 am]

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**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 67**

**Final Flood Elevation Determinations**

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

**ACTION:** Final rule.

**SUMMARY:** Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs 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 DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in 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, 500 C Street, SW., Washington, DC 20472, (202) 646-3461 or (e-mail) [matt.miller@fema.gov](mailto:matt.miller@fema.gov).

**SUPPLEMENTARY INFORMATION:** FEMA makes final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs 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 BFEs and proposed modified BFEs 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.

FEMA 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 FIRM available at the address cited below for each community.

The BFEs and modified BFEs 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 of the 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 record keeping requirements.

Accordingly, 44 CFR part 67 is amended to read 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:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified
Missouri .....	Dunklin County (Unincorporated Areas) (FEMA Docket No. 7609).	Shallow flooding .....	Area north of State Route 84 and south of railroad.	*259
Maps are available for inspection at the Courthouse, Courthouse Square, Kennett, Missouri.				
Missour .....	Pemiscot County (Unincorporated Areas) (FEMA Docket No. 7609).	Shallow flooding .....	Area along Route A about 2,000 feet north of State Route 84.	*259
			Area south of City of Bragg City, west of Main Street.	*259
			Area south of City of Bragg City, east of Main Street.	*259

Maps are available for inspection at the Courthouse, 610 Ward Avenue, Caruthersville, Missouri.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NAVD) Modified
Texas .....	Galveston County (Unincorporated Areas) (FEMA Docket No. 7609).	Gulf of Mexico .....	North of FM 3005, from approximately 1,000 feet west of its intersection with Pirates Beach Circle to approximately 300 feet east of 12 mile Road. At the shoreline, near the Southern terminus of San Domingo Drive, about 100 feet west of the City of Galveston corporate limit, to the corporate limit.	*17  *20
Maps are available for inspection at the 123 Rosenberg Street, Suite 4157, Galveston, Texas.				
Texas .....	Galveston (City), Galveston County (FEMA Docket No. 7609).	Gulf of Mexico .....	At the northern terminus of 9 Mile Road ..  Along the shoreline extending from approximately 1,500 feet east of the southern terminus of 11 Mile Road to Pabst Road.	*18  *20
Maps are available for inspection at City Hall, 823 Rosenberg Street, Galveston, Texas.				
Texas .....	Jamaica Beach (Village), Galveston County (FEMA Docket No. 7609).	Gulf of Mexico .....	From the canal northwest of Bahama Way to West Bay.  Along the shoreline extending from the western corporate limit to the southern terminus of Buccaneer Drive.	*14  *20
Maps are available for inspection at 16628 San Luis Pass Road, Jamaica Beach, Texas.				

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 61, and 69**

[CC Docket No. 96-187; FCC 02-242]

**Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission declined to revise its streamlined tariff procedures in the manner requested by the AT&T Corporation, MCI Telecommunications Corporation, and Southwestern Bell Telephone Company. The intended effect of this document is to maintain the existing Commission rules regarding the filing of tariffs on a streamlined basis.

**FOR FURTHER INFORMATION CONTACT:** Joi Roberson Nolen, Wireline Competition Bureau, 202-418-1537.

**SUPPLEMENTARY INFORMATION:** In this document, the Commission denies the petitions for reconsideration filed by AT&T Corporation (AT&T), MCI Telecommunications Corporation (MCI), and Southwestern Bell Telephone Company (SWBT) (hereinafter "the petitioners") regarding the Commission's 1997 *Streamlined Tariff Report and Order*, 12 FCC Rcd 2170 (1997), 62 FR 5757-03, February 7, 1997. The Commission also denies the requests for clarification filed by AT&T and MCI. The *Streamlined Tariff Report and Order* implemented amendments to section 204(a) of the Communications Act (Act) made by the Telecommunications Act of 1996 (1996 Act). Specifically, the 1996 Act allowed local exchange carriers (LECs) to file new or revised charges, classifications, regulations or practices with the Commission on a streamlined basis. See 47 U.S.C. 204(a)(3). In particular, the *Streamlined Tariff Report and Order* implemented the "deemed lawful" tariff provisions that the 1996 Act added to section 204(a)(3) of the Act. AT&T and MCI sought reconsideration of the Commission's conclusion that "deemed lawful" status confers a conclusive presumption of lawfulness. In their petitions, AT&T and MCI assert that the

Commission should have interpreted the phrase "deemed lawful" as creating a rebuttable presumption, *i.e.*, a tariff filed on a streamlined basis that becomes effective without suspension and investigation is presumed lawful, but that presumption may be rebutted. In support of their position, AT&T and MCI argue that the "deemed lawful" language in section 204(a)(3) is ambiguous. Subsequent to the filing of the petitions for reconsideration, the United States Court of Appeals for the District of Columbia Circuit considered the meaning of "deemed lawful" in section 204(a)(3) in the context of a section 208 complaint case. *ACS of Anchorage, Inc. v. FCC*, 290 F. 3d 406, 412 (D.C. Cir. 2002). The court focused on whether there was a distinction to be made between rates and rates of return for determining whether the deemed lawful standard was applicable to the case. In this context, however, the court specifically considered the Commission's statements in the *Streamlined Tariff Report and Order* that the term "deemed lawful" was "unambiguous" in the "consistent" interpretation of the courts. *Id.* That consideration led the court to say, "[t]his being so [that case law consistently found deemed lawful to be unambiguous], we find section 204(a)(3) equally unambiguous in banning refunds purportedly for rate-of-return