

*Comment 11:* The commenter contends that not only must EPA reclassify Birmingham as a moderate area, it must reclassify the area as severe since the moderate and serious area attainment dates have passed and the area is still not attaining the standard.

*Response:* For the reasons given in response to the previous comments, EPA does not believe that it must reclassify Birmingham as a moderate area. Even if it were required to reclassify Birmingham as a moderate area at this time, whether it would have to reclassify the Birmingham area immediately as severe is open to question. In another case where EPA acted to reclassify a moderate ozone area as serious after the serious area attainment deadline of 1999 had passed, EPA determined that it would be appropriate to reclassify the area as serious and establish an attainment date satisfying the principle that the attainment date be as expeditiously as practicable even though that date post-dated the 1999 attainment date for serious areas. 66 FR 15578, 15584–85, 15587 (Mar. 19, 2001). In any event, as EPA is not reclassifying Birmingham, EPA is not taking any final action with respect to what a new classification for Birmingham should be and is not resolving that issue on a hypothetical basis.

#### IV. Final Action

Pursuant to Section 181(b)(2)(A) of the CAA, EPA is finalizing the determination that the Birmingham area has attained the 1-hour NAAQS for ozone by November 15, 1993, the date required by section 181(a)(1) of the CAA. This determination is based upon three years of complete, quality-assured, ambient air monitoring data for the years 1991–1993 which indicate that Birmingham area attained the 1-hour ozone NAAQS.

#### V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small

entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this action since it is simply a determination that Birmingham was in attainment of the 1-hour ozone NAAQS as of November 15, 1993. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 24, 2002.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 02–27828 Filed 11–1–02; 8:45 am]

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

[Docket No. FEMA–7795]

#### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the

third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Edward Pasterick, Division Director, Risk Communication Division, Federal Insurance and Mitigation Administration, 500 C Street, SW.; Room 411, Washington, DC 20472, (202) 646-2807.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

**National Environmental Policy Act.** This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act.** The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because

the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

**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.

**Paperwork Reduction Act.** This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**Executive Order 12612, Federalism.** This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

**Executive Order 12778, Civil Justice Reform.** This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

#### List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

#### PART 64—[AMENDED]

1. The authority citation for Part 64 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.

#### § 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
<b>Region III</b>				
West Virginia:				
Capon Bridge, Town of, Hampshire County.	540046	May 13, 1975, Emerg.; April 1, 1988, Reg.; November 7, 2002.	Nov. 7, 2002 .....	11/7/02
Hampshire County, Unincorporated Areas.	540226	January 19, 1976, Emerg.; August 1, 1987, Reg.; November 7, 2002.	.....do .....	Do.
Romney, Town of, Hampshire County ..	540276	April 25, 1975, Emerg.; June 15, 1988, Reg.; November 7, 2002.	.....do.	

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
<b>Region IV</b>				
Tennessee:				
Chattanooga, City of, Hamilton County	470072	March 3, 1972, Emerg.; September 3, 1980, Reg.; November 7, 2002.	.....do .....	Do.
Hamilton County, Unincorporated Areas	470071	March 3, 1972, Emerg.; August 1, 1979, Reg.; November 7, 2002.	.....do .....	Do.
Signal Mountain, Town of, Hamilton County.	470078	September 23, 1977, Emerg.; June 28, 1979, Reg.; November 7, 2002.	.....do .....	Do.
<b>Region V</b>				
Minnesota:				
Vadnais Heights, City of, Ramsey County.	270385	July 3, 1974, Emerg.; June 30, 1976, Reg.; November 7, 2002.	.....do .....	Do.
<b>Region IV</b>				
Alabama:				
Cowarts, Town of, Houston County .....	010103	October 29, 1998, Emerg.; November 21, 2002, Reg.; November 21, 2002.	Nov. 7, 2002 .....	11/21/02
Madrid, Town of, Houston County .....	010107	November 6, 1975, Emerg.; July 18, 1985, Reg.; November 21, 2002.	.....do .....	Do.
Webb, Town of, Houston County .....	010109	August 26, 1975, Emerg.; May 15, 1985, Reg.; November 21, 2002.	.....do .....	Do.
Tennessee:				
Portland, City of, Sumner County .....	470187	February 14, 1975, Emerg.; August 4, 1987, Reg.; November 21, 2002.	.....do .....	Do.
<b>Region V</b>				
Ohio:				
Niles, City of, Trumbull County .....	390540	March 5, 1974, Emerg.; June 1, 1978, Reg.; November 21, 2002.	.....do .....	Do.
Wisconsin:				
Sheboygan County, Unincorporated Areas.	550424	April 4, 1973, Emerg.; July 17, 1978, Reg.; November 21, 2002.	.....do .....	Do.
Sheboygan, City of, Sheboygan County	550430	April 23, 1971, Emerg.; March 15, 1977, Reg.; November 21, 2002.	.....do .....	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 25, 2002.

**Anthony S. Lowe,**

*Administrator, Federal Insurance and Mitigation Administration.*

[FR Doc. 02-27959 Filed 11-1-02; 8:45 am]

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 65

[Docket No. FEMA-D-7531]

### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood

elevations for new buildings and their contents.

**DATES:** These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified 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 following table.

**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 (email) [matt.miller@fema.gov](mailto:matt.miller@fema.gov).

**SUPPLEMENTARY INFORMATION:** The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the