

governmental unit or its agencies, or by the issuer. Thus, for example, for bonds to be issued by an authority that acts on behalf of a county, the hearing may be conducted by the authority, the county, or an appointee of either.

(3) *Reasonable public notice.*

Reasonable public notice means notice that is reasonably designed to inform residents of the affected governmental units, including residents of the issuing governmental unit and the governmental unit where a facility is to be located, of the proposed issue. The notice must state the time and place for the public hearing and contain the information required under paragraph (b) of this section. Notice is presumed reasonable if given no fewer than seven (7) business days before the public hearing in one of the ways permitted by this paragraph (c)(2). Notice is treated as reasonably designed to inform affected residents of an approving governmental unit if it is given in one of the following ways:

(i) *Newspaper publication.* Public notice may be given by publication in one or more newspapers of general circulation available to the residents of the governmental unit.

(ii) *Radio or television broadcast.* Public notice may be given by radio or television broadcast to the residents of the governmental unit.

(iii) *Governmental unit Web site posting.* Public notice may be given by electronic posting on the approving governmental unit's Web site for its residents, provided that the governmental unit regularly uses that Web site to inform its residents about events affecting the residents (including notice of public meetings of the governmental unit) and the governmental unit offers a reasonable, publicly known alternative method for obtaining this information for residents without access to computers (such as phone recordings).

(iv) *Alternative State law public notice procedures.* Public notice may be given in a way that is permitted under a general State law for public notices for public hearings for the approving governmental unit.

(4) *Writing.* Unless specifically stated otherwise in this section, if permitted by the governmental unit, the term writing includes electronic communication.

(5) *Mortgage revenue bonds.* The term *mortgage revenue bonds* means qualified mortgage bonds under section 143(a) of the Code or qualified veterans' mortgage bonds under section 143(b) of the Code.

(d) *Special rule on required governmental unit approvals for certain types of financings.* In applying section

147(f)(2) and § 5f.103–2(c) of this chapter to mortgage revenue bonds under section 143, to qualified student loan bonds under section 144(b), and to the portion of an issue of qualified 501(c)(3) bonds under section 145 that finance working capital expenditures, the governmental unit by or on behalf of which those types of bonds are issued is treated as the only governmental unit required to provide a public approval and no separate public approval is required by a host governmental unit with respect to the location, if any, of a financed facility.

(e) *Effective/applicability date.* Except as otherwise provided in this section, § 1.147(f)–1 applies to bonds that are sold on or after the date of publication of final regulations in the **Federal Register** and that are subject to section 147(f).

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–20771 Filed 9–8–08; 8:45 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R04–OAR–2005–0534–200816; FRL–8712–5]

#### Approval and Promulgation of Implementation Plans North Carolina: Prevention of Significant Deterioration and Nonattainment New Source Review Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina in three submittals dated November 30, 2005, March 16, 2007, and June 20, 2008. The proposed revisions modify North Carolina's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting regulations in the SIP to address changes to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are referred to as the "2002 NSR Reform Rules"). In addition, the proposed revisions address an update to the NSR regulations promulgated by EPA on November 29, 2005 ("Ozone

Implementation NSR update") relating to the implementation of the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). The proposed revisions include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits (PALs), recordkeeping and reporting requirements, and provisions recognizing nitrogen oxides (NO<sub>x</sub>) as a precursor to ozone. The June 20, 2008, SIP submittal also contains proposed revisions that are not related to EPA's 2002 NSR Reform Rules. EPA will propose action on those revisions in a separate **Federal Register** notice.

**DATES:** Comments must be received on or before October 9, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–0534, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail:* [adams.yolanda@epa.gov](mailto:adams.yolanda@epa.gov).

3. *Fax:* 404–562–9019.

4. *Mail:* "EPA–R04–OAR–2005–0534" Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Ms. Yolanda Adams, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. "EPA–R04–OAR–2005–0534." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you

provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the North Carolina State Implementation Plan, contact Ms. Nacosta Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9140; e-mail address: [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov). For information regarding New Source Review, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Telephone number: (404) 562-

9214; e-mail address: [adams.yolanda@epa.gov](mailto:adams.yolanda@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document, references to "EPA," "we," "us," or "our," are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

- I. What action is EPA proposing today?
- II. Why is EPA proposing this action?
- III. What is EPA's analysis of North Carolina's NSR rule revisions?
- IV. What action is EPA taking today?
- V. Statutory and Executive Order Reviews

#### **I. What action is EPA proposing today?**

On November 30, 2005, March 16, 2007, and June 20, 2008, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (DENR), submitted revisions to the North Carolina SIP. The SIP submittals consist of revisions to North Carolina Air Quality Rules, Subchapter 2D. Specifically, the November 30, 2005, proposed SIP revisions include changes to Regulation 15A (North Carolina Administrative Code) NCAC 2D .0531, "Sources in Nonattainment Areas." The March 16, 2007, submittal includes changes to Regulation 15A NCAC 2D .0530, "Prevention of Significant Deterioration." The June 20, 2008, submittal consists of additional changes to Regulations 15A NCAC 2D .0530, and .0531. DENR submitted these revisions in response to EPA's December 31, 2002, November 7, 2003, and November 29, 2005, revisions to the Federal NSR program. Pursuant to section 110 of the Clean Air Act ("CAA" or "Act"), EPA is now proposing to approve these SIP revisions. The June 20, 2008, submittal also included revisions to NCAC Subchapter 2D, Section .2400, Clean Air Interstate Rules, which EPA is not taking action on at this time.

#### **II. Why is EPA proposing this action?**

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. In that November 7, 2003, final action, EPA added the definition of "replacement unit," and clarified an issue regarding PALs. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the "2002 NSR Reform Rules." The purpose of this action is to propose to approve the SIP submittals from the State of North Carolina that include the

provisions of EPA's 2002 NSR Reform Rules.

The 2002 NSR Reform Rules are part of EPA's implementation of Parts C and D of title I of the CAA, 42 U.S.C. 7470-7515. Part C of title I of the CAA, 42 U.S.C. 7470-7492, is the PSD program, which applies in areas that meet the NAAQS—"attainment" areas—as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS—"unclassifiable" areas. Part D of title I of the CAA, 42 U.S.C. 7501-7515, is the NNSR program, which applies in areas that are not in attainment of the NAAQS—"nonattainment" areas. Collectively, the PSD and NNSR programs are referred to as the "New Source Review" or NSR programs. EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, Appendix S.

The CAA's NSR programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the CAA, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval, a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with PALs to avoid having a

significant emissions increase that triggers the requirements of the major NSR program; (4) provided a new applicability provision for emissions units that are designated clean units; and (5) excluded pollution control projects (PCPs) from the definition of “physical change or change in the method of operation.” On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules, which added a definition for “replacement unit” and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see, 67 FR 80186 (December 31, 2002), and <http://www.epa.gov/nsr>.

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA’s 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) issued a decision on the challenges to the 2002 NSR Reform Rules. *New York v. United States*, 413 F.3d 3 (D.C. Cir. 2005). In summary, the D.C. Circuit Court vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping, e.g. 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from federal law all provisions pertaining to clean units and the PCP exemption that were vacated by the D.C. Circuit Court.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping, on December 21, 2007, EPA took final action and established that a “reasonable possibility” applies where source emissions equal or exceed 50 percent of the CAA NSR significance levels for any pollutant (72 FR 72607). The “reasonable possibility” provision identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records.

Also relevant to DENR’s submittals, on November 29, 2005 (70 FR 71612), EPA promulgated implementation provisions for the 1997 8-Hour Ozone NAAQS—Phase 2, which made changes to the NSR regulations. These included, among other requirements, a requirement that emissions of NO<sub>x</sub> be considered ozone precursors. States

were required to submit SIP revisions incorporating these changes by no later than June 15, 2007.

The 2002 NSR Reform Rules require that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. (Consistent with changes to 40 CFR 51.166(a)(6)(i), state agencies are now required to adopt and submit SIP revisions within three years after new amendments are published in the **Federal Register**.) State agencies may meet the requirements of 40 CFR part 51 and the 2002 NSR Reform Rules with different but equivalent regulations.

On November 30, 2005, March 16, 2007, and June 20, 2008, the North Carolina DENR submitted revisions to EPA for the purpose of revising the State’s NSR permitting provisions to adopt EPA’s NSR Reform Rules and the Ozone Implementation NSR update. EPA is proposing to approve these submittals pursuant to section 110 of the CAA.

### III. What is EPA’s analysis of North Carolina’s NSR rule revisions?

North Carolina currently has a SIP-approved NSR program for new and modified stationary sources. EPA is now proposing to approve revisions to North Carolina’s existing NSR program. North Carolina’s SIP submittals consist of a compilation of amendments to State rules that became State-effective between May 1, 2005, and May 1, 2008. Copies of North Carolina’s revised NSR rules, as well as the State’s Technical Support Document, can be obtained from the Docket, as discussed in the **ADDRESSES** section above. A discussion of the specific changes to North Carolina’s rules comprising the proposed SIP revisions follows.

North Carolina Regulation 15A NCAC 2D .0530, “Prevention of Significant Deterioration,” contains the preconstruction review program that provides for the prevention of significant deterioration of ambient air quality as required under Part C of title I of the CAA (the PSD program). The PSD program applies to sources that are major stationary sources or undergoing major modifications in areas that are designated as attainment or unclassifiable with regard to any NAAQS. North Carolina’s PSD program was originally approved into the SIP by EPA on February 23, 1982, and has been revised several times since then in order to remain consistent with federal rule changes.

North Carolina’s permitting requirements for major sources in or

impacting upon nonattainment areas are set forth at Regulation 15A NCAC 2D .0531, “Sources in Nonattainment Areas” (NNSR program). The North Carolina NNSR program was originally approved into the North Carolina SIP on July 26, 1982, and has been revised several times since then in order to remain consistent with federal rule changes. The NNSR requirements apply to the construction and modification of any major stationary source of air pollution in a nonattainment area, as required by Part D of title I of the CAA. To receive approval to construct, a source that is subject to these requirements must show that it will not cause a net increase in pollution, will not create a delay in meeting the NAAQS, and that the source will install and use control technology that achieves the lowest achievable emissions rate (LAER).

The changes to North Carolina’s NSR rules, which EPA is now proposing to approve into the North Carolina SIP, were submitted to update the existing North Carolina rules to meet the requirements of the 2002 NSR Reform Rules and the Ozone Implementation NSR update. These SIP revisions address baseline actual emissions, actual-to-projected actual applicability tests, PALs, recordkeeping and reporting requirements, and provisions recognizing NO<sub>x</sub> as a precursor to ozone. North Carolina’s NSR rules incorporate by reference (IBR) the federal NSR rules at 40 CFR 51.166 and 51.165, as amended June 13, 2007, except for the definition of “baseline actual emissions,” the stayed equipment replacement provisions (ERP) (69 FR 40274, July 1, 2004),<sup>1</sup> the PAL adjustment provisions at 51.166(w)(10)(iv)(a) and 51.165(f)(10)(iv)(A), the recordkeeping and reporting requirements at 51.166(r)(6) and 51.165(a)(6), and the Ozone Implementation NSR update provisions at 51.165(a)(8), (a)(9) and (a)(10).

EPA’s evaluation of the North Carolina SIP submittals included a line-by-line comparison of the proposed revisions with the federal requirements. As a general matter, state agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations. As mentioned above, North Carolina chose to IBR the federal rules with several changes. The definition of

<sup>1</sup> EPA promulgated the ERP on October 27, 2003 (68 FR 61248). The ERP was challenged and the D.C. Circuit Court of Appeals stayed the ERP on December 24, 2003. On March 17, 2006, the Court vacated the ERP. See *New York v. EPA*, 443 F.3d 880 (D.C. Cir. 2006).

“baseline actual emissions” at subchapter 2D .0530(b)(1) and .0531(a)(1) was changed to remove the provision allowing emissions units that are not electric utility steam generating units (EUSGUs) to look back 10 years to select the baseline period. North Carolina rules treat EUSGUs and non-EUSGUs the same by allowing a look back of only 5 years. However, North Carolina rules provide the option of allowing a different time period, not to exceed 10 years, if the owner or operator demonstrates that it is more representative of normal source operation. In addition, North Carolina rules require EUSGUs to adjust downward the baseline emissions to account for reductions required under the North Carolina Clean Smokestack Act.

With regard to the PAL adjustment provisions at 51.166(w)(10)(iv)(a) and 51.165(f)(10)(iv)(A), the federal regulations provide the option that if the emissions level is equal to or greater than 80 percent of the PAL level, the reviewing authority may renew the PAL at the same level or it may set the PAL at a different level considering other factors per 51.166(w)(10)(iv)(b) and 51.165(f)(iv)(B) respectively. North Carolina rules at subchapter 2D .0530(i) and .0531(h) require that the PAL be renewed at the same level if emissions are greater than or equal to 80 percent of the PAL.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping and EPA’s December 21, 2007, clarifications of the term “reasonable possibility” (72 FR 72607), North Carolina did not incorporate by reference all the provisions at 40 CFR 51.166(r)(6) and 51.165(a)(6) or adopt the federal “reasonable possibility” standard. Instead, North Carolina adopted recordkeeping and reporting requirements that apply to all modifications that use the actual-to-projected-actual applicability test. Therefore, the North Carolina provisions meet the minimum recordkeeping and reporting requirements of the federal rule. Pursuant to the EPA December 21, 2007, rulemaking on the “reasonable possibility” standard, North Carolina is required to submit a notice to EPA within 3 years to acknowledge that its regulations fulfill these requirements.

With regard to the Ozone Implementation NSR update, North Carolina incorporated by reference all the November 29, 2005, rule revisions except for the provisions at 40 CFR 51.165(a)(8), (9) and (10). North Carolina did not IBR 40 CFR 51.165(a)(10), which addresses PM<sub>10</sub> precursors in PM<sub>10</sub> nonattainment areas, because there are

no PM<sub>10</sub> nonattainment areas in North Carolina. North Carolina did not IBR 40 CFR 51.165(a)(8) and (a)(9), which relate to the applicability of NO<sub>x</sub> as a precursor for ozone and offset ratios in nonattainment areas; however, North Carolina rules have equivalent requirements at subchapter 2D .0531(c) and (f). With respect to the offset ratios, North Carolina’s rules only address the offset ratio for moderate nonattainment areas, which is the current “highest” classification in the State. There is only one 8-hour ozone nonattainment area in North Carolina—the Charlotte-Gastonia-Rock Hill area—which is classified as moderate nonattainment. At the time that any area(s) in North Carolina are reclassified to any level above moderate during a future designation process, North Carolina rules will have to be revised to address the appropriate offset ratios.

In addition to incorporating the federal rules by reference with several changes, North Carolina’s rule revisions include two additional provisions that do not directly relate to the 2002 NSR Reform rules, including: (1) Incorporating by reference 40 CFR 52.21(r)(2) to clarify the period of validity of approval to construct; and (2) requiring that all new natural gas-fired electrical utility generating units install best available control technology (BACT) or LAER, as appropriate. This second requirement was included in the North Carolina rules for clarity and consistency with restrictions on use of allowances imposed by an agreement resulting from provisions of the North Carolina Clean Smokestacks Act.<sup>2</sup>

After evaluation of the submittals and supporting documentation for revisions to North Carolina’s NSR regulations, EPA has determined that the differences from the federal regulations discussed above do not make North Carolina’s NSR program less stringent than the federal program. Therefore, EPA has determined that the proposed SIP revisions are consistent with the federal program requirements for the preparation, adoption and submittal of implementation plans for NSR set forth at 40 CFR 51.165 and 51.166, and are therefore approvable.

#### IV. What action is EPA taking today?

EPA is proposing to approve the changes made to North Carolina’s Regulations 15A NCAC 2D .0530 and .0531, as submitted by the North

<sup>2</sup> Any allowances for emissions reductions achieved under the Clean Smokestacks Act are not available to the subject facilities, nor any other sources, and may not be used to offset emissions and avoid installation of BACT or LAER on new natural gas-fired units.

Carolina DENR on November 30, 2005, March 16, 2007, and June 20, 2008, as revisions to the North Carolina SIP.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that

it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 29, 2008.

**Russell L. Wright, Jr.,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E8-20874 Filed 9-8-08; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket No. FEMA-B-1003]

#### Proposed Flood Elevation Determinations

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

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1 percent 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 8, 2008.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are 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-1003, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151, or (e-mail) [bill.blanton@dhs.gov](mailto:bill.blanton@dhs.gov).

#### FOR FURTHER INFORMATION CONTACT:

William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151 or (email) [bill.blanton@dhs.gov](mailto:bill.blanton@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.

*Administrative Procedure Act Statement.* This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

*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.

#### List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be 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.

#### § 67.4 [Amended]

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