

PART 52—[AMENDED]

Subpart VV—Virginia

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entry for Section 5–30–55 and by adding the entry for Section 5–30–56. The table in paragraph (e) is amended by adding an entry for “Documents Incorporated by

Reference” after the ninth existing entry for “Documents Incorporated by Reference.” The amendments read as follows:

§ 52.2420 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * * * *	9 VAC 5, Chapter 30 Ambient Air Quality Standards [Part III]			
5–30–55	Ozone (8-hour, 0.08 ppm)	6/24/09	1/18/11 [Insert page number where the document begins].	Revised section.
5–30–56	Ozone (8-hour, 0.075 ppm)	6/24/09	1/18/11 [Insert page number where the document begins].	Added section.

* * * * *
(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Documents Incorporated by Reference (9 VAC 5–20–21, Sections B and E.1.).	Statewide	9/27/10	1/18/11 [Insert page number where the document begins].	Revised sections.

* * * * *
[FR Doc. 2011–487 Filed 1–14–11; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2002–0051; EPA–HQ–OAR–2007–0877; FRL–9253–4]

RIN 2060–AQ59

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final rule; amendments.

SUMMARY: The EPA is taking direct final action on amendments to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry and Standards of Performance (NSPS) for Portland Cement Plants. The final rules were published on September 9, 2010. This direct final action amends certain regulatory text to clarify compliance dates and clarifies that the previously issued emission limits that were changed in the September 9, 2010, action remain in effect until sources are required to comply with the revised limits. We are also correcting two minor typographical errors in the regulatory text to the September 9, 2010 action.

DATES: The direct final rule is effective on March 21, 2011, without further notice, unless EPA receives significant adverse written comment by February 17, 2011, or if a public hearing is requested by February 2, 2011. If

significant adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** clarifying which provisions will become effective and which provisions are being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2002–0051, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* a-and-r-docket@epa.gov.
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center (6102T), National Emission Standards for Hazardous Air Pollutant From the Portland Cement Manufacturing Industry Docket, Docket ID No. EPA–HQ–OAR–2002–0051, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two

copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

• **Hand Delivery:** In person or by courier, deliver comments to: EPA Docket Center (6102T), Standards of Performance (NSPS) for Portland Cement Plants Docket, Docket ID No. EPA-HQ-OAR-2002-0051, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2002-0051. 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 information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. 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.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material,

will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett; Office of Air Quality Planning and Standards; Sector Policies and Programs Division, Metals and Minerals Group (D243-02); Environmental Protection Agency; Research Triangle Park, NC 27711; telephone number: (919) 541-5605; fax number: (919) 541-5450; e-mail address: barnett.keith@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What is the background for the amendments?

On September 9, 2010 (75 FR 54970), EPA issued final amendments to National Emission Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry and Review of New Source Performance Standards (NSPS) for Portland Cement Plants. EPA subsequently determined that the final rule amendments were unclear in certain areas. First, compliance dates are unclear for some sources. Second, the final rule amendments did not make clear that emission limits currently in effect for existing sources remain in effect until the compliance date of the September 9, 2010, emission standards. Third, we inadvertently omitted a required rule reference in an incorporation by reference provision. Finally, this direct final rule will correct a typographical error in Table 1 of § 63.1343(b). This action makes these clarifications and corrects these errors.

We are issuing the amendments as a direct final rule, without a prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comment. However, in the Proposed Rules section of this **Federal Register** notice, we are publishing a separate document that will serve as the proposal to amend the NESHAP and NSPS for cement production if significant adverse comments are filed.

II. What are the changes to the final rules (75 FR 54970)?

This direct final rule changes the following provisions. In § 63.1351(b) we establish a compliance date for existing sources of three years from publication of the final rule in the **Federal Register** for the particulate matter (PM), total hydrocarbons (THC), hydrochloric acid (HCl), and mercury emissions limits. However, we also made other changes to rule requirements, which included regulating open clinker piles and changing the requirements for opacity measurements. Because the rule text did not include specific compliance dates for these other requirements, there is uncertainty as to the compliance dates as applied to existing sources—for example, whether there is an unstated (and unintended) implication that compliance dates for standards and other changes not enumerated explicitly are different from three years after promulgation. EPA in fact intended that the same compliance date apply for all changes to rule requirements for existing sources. This is evident since EPA indicated generally that it was establishing a compliance date of three years for the September 9, 2010, requirements for existing sources (75 FR at 54993), and never discussed or otherwise suggested (in either the proposed or final rule) any alternative compliance date. We have now modified § 63.1351 to clarify that all of the amendments of standards for existing sources have a compliance date of three years from promulgation. In addition, we are clarifying the rule text to make clear that the compliance date for the monitoring requirements associated with the September 9, 2010, emission standards, including requirements for measuring clinker production, is three years from promulgation.

In establishing the September 9, 2010, standards for existing cement kilns, it was not our intention to remove the existing emissions limits for these kilns adopted by EPA in 1999 and 2006. No such change was proposed, discussed, or contemplated by EPA or by any commenter. However, due to a drafting error, these provisions were inadvertently deleted. In this action we are restoring the kiln, clinker cooler, and raw material dryer emissions limits as they existed prior to the September 9, 2010, rule amendments. This includes both the new and existing source emissions limits that existed prior to September 9, 2010. Kilns that are now defined as existing sources for the mercury and THC limits promulgated on September 9, 2010, will

still be required to meet the new source standards promulgated on December 20, 2006 (71 FR 76518), if they were subject to these emissions limits, until the compliance date for the limits promulgated on September 9, 2010, has passed. Once the compliance date for any emissions limit changed on September 9, 2010, has passed, the previous limit no longer applies.

In the Incorporation by Reference section of Part 60 subpart A, we inadvertently omitted a reference to § 60.257(b)(3), which was previously incorporated in paragraph § 60.17(h)(4). In this notice, we are adding this reference to that paragraph.

Finally, on Table 1 of § 63.1343 entry 16 in the column titled, "And if it is located," we failed to include the words "At a major source" in entry 16. We are adding this language to the table.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget (OMB). (See 75 FR 55029–30) This action is a correction to certain text in the final rules and is not a "major rule" as defined by 5 U.S.C. 804(2). However, the final rules promulgated on September 9, 2010, were reviewed by OMB.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action adds clarifications and corrections the final standards. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (75 FR 54970, September 9, 2010) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0416 and 2060–0614. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial

number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of this rule on small entities, small entity is defined as: (1) A small business whose parent company has no more than 750 employees depending on the size definition for the affected NAICS code (as defined by Small Business Administration (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of this direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities because it does not add any additional regulatory requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This direct final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, this final rule is not subject to the requirements of section 202 and 205 of the UMRA.

This final action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This final action contains no requirements that apply to such governments, imposes no obligations upon them, and will not result in expenditures by them of \$100 million or more in any one year or any disproportionate impacts on them.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

This direct final rule does not have federalism implications. It will 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. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to these final rules.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the regulation and develops a Tribal summary impact statement.

This direct final rule does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on Tribal governments, 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 in Executive Order 13175. The final rule imposes no new requirements on the one Tribally owned facility. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as

applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve changes to the technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629) (February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The direct final rule does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), because it does not change any regulatory requirements. This action merely corrects and clarifies existing requirements.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 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. 804(2). This correction is effective March 21, 2011.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: January 10, 2011.

Lisa P. Jackson,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code

of Federal Regulations is amended as follows:

PART 60—[AMENDED]

- 1. The authority citation for part 60 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

- 2. Section 60.17 is amended by revising paragraph (h)(4) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(h) * * *

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], IBR approved for § 60.56c(b)(4) of subpart Ec, § 60.63(f)(2) and (f)(4) of subpart F, § 60.106(e)(2) of subpart J, §§ 60.104a(d)(3), (d)(5), (d)(6), (h)(3), (h)(4), (h)(5), (i)(3), (i)(4), (i)(5), (j)(3), and (j)(4), 60.105a(d)(4), (f)(2), (f)(4), (g)(2), and (g)(4), 60.106a(a)(1)(iii), (a)(2)(iii), (a)(2)(v), (a)(2)(viii), (a)(3)(ii), and (a)(3)(v), and 60.107a(a)(1)(ii), (a)(1)(iv), (a)(2)(ii), (c)(2), (c)(4), and (d)(2) of subpart Ja, § 60.257(b)(3) of Subpart Y, tables 1 and 3 of subpart EEEE, tables 2 and 4 of subpart FFFF, table 2 of subpart JJJJ, and § 60.4415(a)(2) and (a)(3) of subpart KKKK of this part.

PART 63—[AMENDED]

- 3. The authority citation for part 63 continues to read as follows:

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

Subpart LLL—[Amended]

- 4. Section 63.1343 is amended by revising entry 16 of Table 1 in paragraph (b)(1) and adding paragraph (e) to read as follows:

§ 63.1343 What standards apply to my kilns, clinker coolers, raw material dryers, and open clinker piles?

* * * * *

(b)(1) * * *

TABLE 1—EMISSIONS LIMITS FOR KILNS (ROWS 1–8), CLINKER COOLERS (ROWS 9–12), RAW MATERIAL DRYERS (ROWS 13–15), RAW AND FINISH MILLS (ROW 16)

If your source is	And the operating mode is:	And if is located	Your emissions limits are:	And the units of the emissions limit are:	The oxygen correction factor is:
*	*	*	*	*	*
16 An Existing or new raw or finish mill.	All operating modes	At a major source	Opacity-10	percent	NA.
*	*	*	*	*	*

* * * * * as an existing source in § 63.1351, and September 9, 2010, must continue to meet the limits shown in Table 2 to this section until September 9, 2013.

TABLE 2—EMISSIONS LIMITS IN EFFECT PRIOR TO SEPTEMBER 9, 2010, FOR KILNS (ROWS 1–4), CLINKER COOLERS (ROW 5), AND RAW MATERIAL DRYERS (ROWS 6–9).

If your source is	and	And if it is located at	Your emissions limits are ¹ :	And the units of the emissions limit are:
1. An existing kiln	it commenced construction or reconstruction on or prior to December 2, 2005.	A major source	PM—0.3 Opacity—20 D/F—0.2 ² THC—50 ^{3 4}	lb/ton feed percent ng/dscm (TEQ) ppmvd.
2. An existing kiln	it commenced construction or reconstruction after December 2, 2005.	A major source	PM—0.3 Opacity—20 D/F—0.2 ² THC—20 ^{3 5} Mercury— 41 ⁶ .	lb/ton feed percent ng/dscm (TEQ) ppmvd ug/dscm.
3. An existing kiln	it commenced construction or reconstruction on or prior to December 2, 2005.	An area source	D/F—0.2 ² THC—20 ^{3 5} Mercury— 41 ⁶ .	ng/dscm (TEQ) ppmvd ug/dscm.
4. An existing kiln	it commenced construction or reconstruction after December 2, 2005.	An area source	D/F—0.2 ² THC—20 ^{3 5} Mercury— 41 ⁶ .	ng/dscm (TEQ) ppmvd ug/dscm.
5. An existing clinker cooler	NA	A major source	PM—0.1 Opacity—10 THC—50 ^{3 4}	lb/ton feed percent.
6. An existing raw material dryer ..	it commenced construction or reconstruction on or prior to December 2, 2005.	A major source	Opacity—10 THC—20 ^{3 5}	percent. ppmvd
7. An existing raw material dryer ..	it commenced construction or reconstruction after December 2, 2005.	A major source	Opacity—10 THC—20 ^{3 5}	percent. ppmvd
8. An existing raw material dryer ..	it commenced construction or reconstruction on or prior to December 2, 2005.	An area source	Opacity—10 THC—50 ^{3 4}	percent. ppmvd.
9. An existing raw material dryer ..	it commenced construction or reconstruction after December 2, 2005.	An area source	THC—20 ^{3 5}	ppmvd.

¹ All emission limits expressed as a concentration basis (ppmvd, ng/dscm) are corrected to seven percent oxygen.
² If the average temperature at the inlet to the first particulate matter control device (fabric filter or electrostatic precipitator) during the D/F performance test is 400 °F or less, this limit is changed to 0.4 ng/dscm (TEQ).
³ Measured as propane.
⁴ Only applies to Greenfield kilns or raw material dryers.
⁵ As an alternative, a source may demonstrate a 98 percent reduction in THC emissions from the exit of the kiln or raw material dryer to discharge to the atmosphere. Inline raw mills are considered to be an integral part of the kiln.
⁶ As an alternative, a source may route the emissions through a packer bed or spray tower wet scrubber with a liquid-to-gas ratio of 30 gallons per 1000 actual cubic feet per minute or more and meet a site-specific emission limit based on the measured performance of the wet scrubber.

■ 5. Section 63.1350 is amended by revising paragraph (d)(2) to read as follows:
§ 63.1350 Monitoring requirements.
 * * * * *

(d) * * *
 (2) Determine, record, and maintain a record of the accuracy of the system of measuring hourly clinker production (or feed mass flow if applicable). During each quarter of source operation, you

must determine, record, and maintain a record of the ongoing accuracy of the system of measuring hourly clinker production (or feed mass flow).
 * * * * *

■ 6. Section 63.1351 is revised to read as follows:

§ 63.1351 Compliance dates.

(a) The compliance date for any affected existing source subject to any rule requirements that were in effect before December 20, 2006, is:

(1) June 14, 2002, for sources that commenced construction before or on March 24, 1998, or

(2) June 14, 1999 or startup for sources that commenced construction after March 24, 1998.

(b) The compliance date for any affected existing source subject to any rule requirements that became effective on December 20, 2006, is:

(1) December 21, 2009, for sources that commenced construction after December 2, 2005 and before or on December 20, 2006, or

(2) Startup for sources that commenced construction after December 20, 2006.

(c) The compliance date for existing sources for all the requirements that became effective on November 8, 2010 will be September 9, 2013.

(d) The compliance date for new sources is November 9, 2010 or startup, whichever is later.

[FR Doc. 2011-759 Filed 1-14-11; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA-2011-0002; Internal Agency Docket No. FEMA-B-1172]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

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 Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs 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: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) *luis.rodriquez1@dhs.gov*.

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

Any request for reconsideration must be based on knowledge of changed conditions or 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 BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These 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. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim 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.

Regulatory Classification. This interim 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 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa ..	City of Peoria (10-09-1908P).	October 21, 2010, October 28, 2010, <i>Arizona Business Gazette</i> .	The Honorable Bob Barrett, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	Oct. 15, 2010	040050