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Dated: May 1, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–10690 Filed 5–6–92; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[AMS-FRL-4127-7]

Regulation of Fuels and Fuel Additives: Standards for Highway Diesel Fuel Quality-Sulfur Content; et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule announces revisions to the Fuels and Fuel Additives regulations to conform such regulations to section 211(i) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAA or Act). Specifically, section 211(i) of the CAA requires that all highway diesel fuel comply with a maximum sulfur content standard of 0.05 percent by weight, effective October 1, 1993. In addition to the preceding statutory required revisions, this final rule also amends the regulations for the Control of Air Pollution from New and In-use Motor Vehicles and New and In-use Motor Vehicle Engines by carrying-over the existing heavy-duty diesel engine (HDDE) oxides of nitrogen (NOx) standard of 5.0 g/BHP-hr to the 1994 through 1997 model years, and by correcting an error in the viscosity specification for Type 2–D diesel test fuel. Finally, this rule also amends the regulations for the Control of Air Pollution from New and In-use Motor Vehicles and New and In-use Motor Vehicle Engines by removing the requirement, which was scheduled to become effective with the 1994 model year, that labels be affixed to diesel vehicles directing that only low sulfur fuel be used in the vehicle. The intended effects of this rule are to ensure that all highway diesel fuel available after September 30, 1993 will be suitable for use in 1994 and later model year HDDEs which will require the use of low sulfur fuel, to remove any ambiguity in the regulations with respect to the NOx standard for 1994 through 1997 model year HDDEs and to remove a labeling requirement which was made redundant as a result of the revision to the highway diesel fuel sulfur standard.

EFFECTIVE DATE: This Final Rule is effective on June 8, 1992.

ADDRESSES: Materials relevant to this final rule are contained in Public Docket No. A–90–41. The docket is located in room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 12 noon and between 1 p.m. and 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Peter Hutchins, U.S. EPA (SDSB–12), Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4340.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 211(i) of the Clean Air Act requires that all highway diesel fuel must comply with the maximum sulfur content standard of 0.05 percent by weight, and a minimum cetane index of 40, effective October 1, 1993. This eliminated the two year extension for small refiners contained in EPA's current regulations, and expanded the diesel fuel content prohibition of 40 CFR 80.29(a) to include all persons. Section 211(i) also established sulfur content requirements for heavy-duty diesel certification fuel, and authorized EPA to require the use of a dye to differentiate highway diesel fuel from other diesel fuel, and to adopt an aromatic content requirement as an alternative to a minimum cetane index.

In a July 17, 1991 Federal Register Notice (56 FR 32533; July 17, 1991) EPA proposed various revisions to 40 CFR part 80, to conform it with section 211(i) of the Act. The proposal included the removal of a two year extension for small refiners from compliance with the diesel sulfur content requirements, and an extension of the prohibitions of 40 CFR 80.29(a) to include all persons.

Unrelated to section 211(i) of the Act, EPA also proposed certain revisions to 40 CFR Part 86: (a) The carryover of the HDDE NOx standard of 5.0 g/BHP-hr through the 1997 model year, and (b) the correction of an error in the viscosity specification of Type 2–D diesel test fuel for 1994 and later model years.

As announced in the NPRM, a public hearing on the proposed changes was held on August 2, 1991 at EPA's Motor Vehicle Emission Laboratory in Ann Arbor, Michigan. While the opportunity for public participation was provided, no persons or organizations availed themselves of the opportunity to provide oral comments on the proposal. The period for acceptance of written comments continued for thirty days following the public hearing; i.e. through September 3, 1991.

II. Description of the Action

This final rule adopts the revisions which were proposed in the July 17, 1991 NPRM as follows. First, the highway diesel fuel quality standards are revised to bring them into conformance with section 211(i) of the Clean Air Act. Specifically, effective October 1, 1993, all highway diesel fuel is required to comply with the maximum sulfur content standard of 0.05 percent by weight, as well as other requirements found in 40 CFR 80.29(a). No person may introduce highway diesel fuel into commerce in violation of these requirements. Second, the regulations applicable to 1994 through 1997 model year heavy-duty diesel engines are amended to include an Oxides of Nitrogen (NOx) exhaust emission standard of 5.0 gram per brake-horsepower hour.[1] In addition, requirements are removed that would have required certain diesel vehicles to be labeled for the use of low sulfur fuel only, and errors are corrected in the regulations for the viscosity specification for Type 2–D diesel test fuel for use with 1991 and 1994 model year light-duty vehicles and light-duty trucks, and with 1991 model year heavy-duty engines. The corrections to the viscosity specification, and the labeling requirements were not proposed in the July 17, 1991 NPRM but were brought to EPA's attention by comments from interested parties.

III. Public Participation

A public hearing was held at EPA's Motor Vehicle Emissions Laboratory in Ann Arbor, Michigan on August 2, 1991. No persons or organizations provided testimony or comments on the proposal at the hearing.

The period for the provision of written comments on the NPRM remained open for thirty (30) days following the hearing; i.e., through September 3, 1991. Written comments on the proposed amendments to the regulations were provided by seven organizations: Engine Manufacturers Association; Exxon Company, U.S.A.; Mobil Oil Corporation; Motor Vehicle Manufacturers Association of the United

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[1] EPA's current definition of useful life, 40 CFR 86.090–2, is appropriate under section 202(d) of the Act with respect to this emission standard rulemaking, and continues without change.

States, Inc.; Navistar International Transportation Corp.; Volvo GM Heavy Truck Corporation; and Witco Corporation.

Summary of the Comments

Commenters were generally supportive of the proposal and agreed with the changes proposed to conform the regulations with the Clean Air Act as amended in 1990, and with the carryover of the 5.0 g/BHP-hr NOx standard for heavy-duty diesel engines. Commenters recommended changes in three areas of the proposal as follows.

First, Navistar International Transportation Corp. (Navistar) and the Motor Vehicle Manufacturers Association (MVMA) both commented that additional changes should be made to the regulations to remove the requirement that two or more labels, reading "Low Sulfur Diesel Fuel Only", be affixed to diesel fueled motor vehicles. They argued that vehicle labels will serve no useful purpose given the elimination of the small refiner extension. Their belief was that the opportunities for unintentional misfueling will be virtually eliminated since only low-sulfur highway diesel fuel will be available. Finally, they argued that the presence of labels will not prevent intentional misfueling with either off-highway diesel fuel or home heating oil. As a means of informing vehicles owners/operators of the need for the use of low-sulfur diesel fuel, MVMA proposed that vehicle manufacturers include, along with the other information on fuel specification requirements, a statement in the owners manual requiring the use of low-sulfur fuel along with a warning against the use of improper fuels and associated penalties.

Second, the Engine Manufacturers Association (EMA) commented that the correction proposed for the viscosity of Type 2-D diesel test fuel was itself in error and should occur in Table N91-2 and not in Table N94-2 as had been proposed. In support of this comment, EMA referenced the EPA/EMA Calibration Task Force meeting of March 13-14, 1991 at which the discrepancy between the test fuel viscosity specification for the 1991 model year and that for the 1990 and 1994 model years had been noted and the need for correction of the 1991 specification had been identified.

Third, on the understanding that EPA was proposing changes in the analytical test procedure for the measurement of the aromatic content of diesel fuel, Witco Corporation recommended the use of a Supercritical Fluid Chromatography test rather than ASTM test procedure D 1319 which is specified in the regulations.

EPA Response to the Comments

The first issue concerns a requirement that manufacturers of certain diesel fueled motor vehicles, beginning with the 1994 model year, affix two or more permanent labels on the vehicle, reading "Low Sulfur Diesel Fuel Only"[2] This labeling requirement was promulgated along with the provisions which provided small refiners with a two year extension for compliance with the sulfur standard. As a result of the small refiner extension, two grades of highway diesel fuel would have been available, and it was necessary to require labeling of diesel vehicles designed and certified for operation on low sulfur fuel (0.05 percent by weight maximum). Since the small refiner extension for compliance with the sulfur standard will no longer be available, EPA concurs with the comments provided and has made the necessary change in the rules.

Concerning the second issue detailed above, i.e. correction of an error in the viscosity specifications for Type 2-D diesel test fuel, EPA concurs with the comment provided and has made the necessary correction in the rules. Inspection of the specifications for Type 2-D diesel test fuel for use with light-duty diesel vehicles and light-duty diesel trucks showed that the error was also present in these specifications. Those errors are also corrected in this rulemaking.

The third issue summarized above, i.e. the comment by Witco recommending a change in the analytical test procedure for the determination of the aromatic content of diesel fuel, was directed to an area of the regulations which was not being addressed by the NPRM. EPA will, therefore, not take any action in response to this comment.

IV. Environmental and Economic Impacts

The estimated environmental and economic effects of this final rule remain the same as were presented in the proposal. The estimates are summarized below.

A. Highway Diesel Fuel Quality, Sulfur Content

At the time of publication of the final rule establishing the diesel fuel sulfur standard (55 FR 34120, August 21, 1990), EPA noted that the two year extension for compliance by small refiners would have some small delaying effect in achieving the full benefits of the sulfur standard. While the magnitude of the effect was expected to be small, it could not be accurately quantified because of the lack of information on which small refiners would either; (a) comply with the 0.05 standard either immediately or prior to termination of the extension, (b) comply with the interim standards which, while being less stringent than the 0.05 standard, still required significant reduction in the sulfur content of diesel fuel, or (c) terminate production of highway diesel fuel.

For this action, which removes the small refiner extension and which as a result will recover any benefits which might not have been realized during the two year period of the extension, the above conditions remain unchanged. A precise estimate of the benefits for this action can not be developed since the degree to which small refiners may have availed themselves of the extension can not be predicted. Directionally, the effect of elimination of the extension will be for a reduction in emmissions.

In terms of costs, the regulations establishing the small refiner extension (55 FR 34120, August 21, 1990) specified that use of the extension was available only to those small refiners intending to produce 0.05 weight percent sulfur highway diesel fuel by October 1, 1995. The regulations also specified that small refiners availing themselves of the extension would have to provide evidence to EPA of capital commitments required to make the necessary modifications to their refineries. Because of these regulatory requirements, small refiners which would have used the extension would have delayed costs of complying with the 0.05 weight percent standard by up to two years. They would not, however, have actually eliminated any significant costs. The effect of removing the two year extension, as proposed in this action, on these refiners is that required investments will have to be made one or two years earlier.

Although the small refiner extension was eliminated, the amended Clean Air Act provides for small refiners that produce complying highway diesel fuel to receive desulfurization allowances (Title IV, Acid Deposition Control, section 410(h)). Preliminary estimates for the value of these desulfurization allowances suggest that they may be significant. Such provisions, when implemented by EPA, should mitigate any special problems that small refiners may face in complying with the highway diesel fuel sulfur standard.

[2] 40 CFR 80.31

B. Heavy-duty Diesel Engines, NO_x Standard

Reductions in NO_x emissions for HDDEs presently being achieved as a result of the 5.0 b/BHP-hr NO_x standard will continue to be realized through the 1997 model year. When the 5.0 g/BHP-hr NO_x standard was promulgated in 1985, for implementation in the 1991 model year, the anticipated discounted emissions reductions were approximately 0.49 tons per heavy-duty diesel engine over the useful life of the engine.

Since manfacturers are already complying with the 5.0 g/BHP-hr NO_x standard, carryover of the standard will not impose any new costs on manufacturers or users of vehicles equipped with complying engines.

V. Statutory Authority

The statutory authority for the standards being implemented today are contained in the following sections of the Clean Air Act as amended: Section 202 for the HDE NO_x standard and the diesel test fuel specification, and section 211 for the highway diesel fuel sulfur standard.

VI. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of $100 million, have a significant adverse impact on competition, investment, employment or innovation or result in a major price increase. The two elements of this rulemaking package, individually and collectively, do not constitute major rules according to the established criteria. One of the elements, the removal of the extension for small refiners, merely shortens the time for compliance with current rules for a small number of companies. The second element, the carryover heavy-duty engine NO_x standard, will impose no new costs since manufacturers are already complying with the standard. Therefore, I have determined that this final rule does snot constitute a "major" regulation and no Regulatory Impacts Analysis has been prepared.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments have been placed in the public docket for this rulemaking.

VII. Compliance With the Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, the Administrator is required to certify that a regulation will not have a significant adverse economic impact on a substantial number of small business entities or to perform an analysis of such impact. There will not be a significant impact on a substantial number of small business entities due to the heavy-duty NO_x standard since none of the manufacturers which will be affected by these regulations are small business entities. Nor will there be such impacts from the changes to the diesel fuel quality provisions. Although EPA had determined that an extension was advisable to mitigate the effect of the diesel fuel quality regulations on small refiners as part of its August 21, 1990 rulemaking, Congress has determined that desulfurization allowances will be a more effective tool for mitigation than the extension. For these reasons, I certify that the rules contained in this final rule will not have an adverse economic impact on a substantial number of small entities.

VIII. Reporting and Recordkeeping Requirements

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must obtain OMB clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. This final rule does not create any new information requirements or contain any new information collection activities.

IX. Judicial Review

Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

List of Subjects

40 CFR Part 80

Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, and Reporting and recordkeeping requirements.

40 CFR Part 86

Administrative practice and procedure, confidential business information, Labeling, Motor vehicle pollution, and Reporting and recordkeeping requirements.

Dated: April 22, 1992.

William K. Reilly,

Administrator.

APPENDIX TO PREAMBLE.—TABLE OF CHANGES TO BE MADE TO VARIOUS SECTIONS OF 40 CFR

Section	Change	Reason
1. Part 80 Authority.	None	
2. Section 80.2(bb).	Remove definition of "Exempted on-highway diesel fuel".	Remove small refiner extension.
3. Section 80.29(a), (c), (d) and (e).	Revise paragraph (a), remove existing paragraph (c), recodify and revise paragraphs (d) and (e).	Do.
4. Section 80.31.	Remove Section 80.31.	Do.
5. Part 86 Authority.	Add Sections 205 and 216.	Correct typographical error.
6. Section 86.094-11(a)(1)(iii).	Add NO_x standard.	Paragraph was reserved, NO_x standard not specified.
7. Section 86.113-91(b)(2).	Change viscosity specification.	Correct typographical error.
8. Section 86.113-94(b)(2).	Change viscosity specification.	Correct typographical error.
9. Section 86.1313-91(b)(2).	Change viscosity specification.	Correct typographical error.

For the reasons set forth in the preamble, parts 80 and 86 of title 40 of the Code of Federal Regulations are amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The Authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211(c), 211(h) and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545(c), 7545(h) and 7601(a).

§ 80.2 [Amended]

2. Section 80.2 is amended by removing and reserving paragraph (bb).

3. Section 80.29 is amended by revising paragraph (a), by removing existing paragraph (c), by redesignating paragraphs (d) and (e) as paragraphs (c) and (d) respectively, and by revising the newly designated paragraphs (c) and (d), to read as follows:

§ 80.29 Controls and prohibitions on diesel fuel quality.

(a) *Prohibited activities.* Beginning October 1, 1993, no person, including but not limited to, refiners, importers, distributors, re-sellers, carriers, retailers or wholesale purchasers-consumers shall manufacture, introduce into commerce, sell, offer for sale, supply, dispense, offer for supply, or transport any diesel fuel for use in motor vehicles unless the diesel fuel is free of visible evidence of the dye 1,4-dialkylamino-anthraquinone and has a cetane index of at least 40, or a maximum aromatic content of 35 volume percent, and a sulfur percentage, by weight, no greater than 0.05 percent.

* * * * *

(c) *Liability.* Liability for violations of paragraph (a) of this section shall be determined according to the provisions of § 80.30.

(d) *Penalties.* Penalties for violations of paragraph (a) of this section shall be determined according to the provisions of § 80.5.

§ 80.31 [Removed]

4. Part 80 is amended by removing § 80.31.

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

5. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216 and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525,7541, 7542, 7549, 7550 and 76019(a).

6. Section 86.094–11 of subpart A is amended by revising paragraph (a)(1)(iii), to read as follows:

§ 86.094–11 Emission standards for 1994 and later model year diesel heavy-duty engines.

(a)(1) * * *

(iii) *Oxides of nitrogen.* (A) 5.0 grams per brake horsepower-hour (1.9 grams per megajoule), as measured under transient operating conditions.

(B) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the NOx averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the NOx FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

* * * * *

7. Section 86.113–91 of subpart B is amended by revising paragraph (b)(2) to read as follows:

§ 86.113–91 Fuel specifications.

* * * * *

(b) * * *

(2) Petroleum fuel for diesel vehicles meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of petroleum fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel, shall be used.

Item		ASTM test method No.	Type 2–D
Cetane Number.		D613	42–50
Distillation range:			
IBP	°F	D86	340–400
	(°C)		(171.1–204.4)
10 pct. point.	°F	D86	400–460
	(°C)		(204.4–237.8)
50 pct. point.	°F	D86	470–540
	(°C)		(243.3–282.2)
90 pct. point.	°F	D86	560–630
	(°C)		(293.3–332.2)
EP	°F	D86	610–690
	(°C)		(321.1–365.6)
Gravity	°API	D287	32–37
Total sulfur	pct.	D2622	0.08–0.12
Hydrocarbon composition:			
Aromatics, min.	pct.	D1319	27
Paraffins, Naphthenes, Olefins.		D1319	(1)
Flashpoint, min.	°F	D93	130
	(°C)		(54.4)
Viscosity, centistokes.		D445	2.0–3.2

[1] Remainder.

* * * * *

8. Section 86.113–94 of subpart B is amended by revising paragraph (b)(2) to read as follows:

§ 86.113–94 Fuel specifications.

* * * * *

(b) * * *

(2) Petroleum fuel for diesel vehicles meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of petroleum fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel, shall be used.

Item		ASTM test method No.	Type 2–D
Cetane Number.		D613	40–48
Cetane Index.		D976	40–48
Distillation range:			
IBP	°F	D86	340–400
	(°C)		(171.1–204.4)
10 pct. point.	°F	D86	400–460
	(°C)		(204.4–237.8)
50 pct. point.	°F	D86	470–540
	(°C)		(243.3–282.2)
90 pct. point.	°F	D86	560–630
(°C)		(293.3–332.2).	
EP	°F	D86	610–690
	(°C)		(321.1–365.6)
Gravity	°API	D287	32–37
Total sulfur	pct.	D2622	0.03–0.05
Hydrocarbon composition:			
Aromatics, min.	pct.	D1319	27
Paraffins Naphthenes, Olefins.		D1319	(1)
Flashpoint, min.	°F	D93	130
	(°C)		(54.4)
Viscosity, Centistokes.		D445	2.0–3.2

[1] Remainder.

* * * * *

9. Section 86.1313–91 of subpart N is amended by revising paragraph (b)(2), to read as follows:

§ 86.1313–91 Fuel specifications.

* * * * *

(b) * * *

(2) Petroleum fuel for diesel engines meeting the specifications in Table N91–2, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of petroleum fuel used shall be commercially designated as "Type 2–D" grade diesel fuel except that fuel commercially designated as "Type 1–D" grade diesel fuel may be substituted provided that the manufacturer has submitted evidence to the Administrator demonstrating to the Administrator's satisfaction that this fuel will be the predominant in-use fuel. Such evidence could include such things as copies of signed contracts from customers indicating the intent to purchase and use "Type 1–D" grade diesel fuel as the primary fuel for use in the engines or

other evidence acceptable to the Administrator.

TABLE N91-2

Item		ASTM	Type 1-D	Tupe 2-D
Cetane Number		D613	40–54	40–48
Cetane Index		D976	40–54	40–48
Distillation range:				
IBP	°F	D86	330–390	340–400
	(°C)		(165.6–198.9)	(171.1–204.4)
10 pct. point	°F	D86	370–430	400–460
	(°C)		(187.8–221.1)	(204.4–237.8)
50 pct. point	°F	D86	410–480	470–540
	(°C)		(210–248.9)	(243.3–282.2)
90 pct. point	°F	D86	460–520	560–630
	(°C)		(237.8–271.1)	(293.3–332.2)
EP	°F	D86	500–560	610–690
	(°C)		(260.0–293.3)	(321.1–365.6)
Gravity	°API	D287	40–44	32–37
Total sulfur	pct.	D2622	0.03–0.05	0.03–0.05
Hydrocarbon composition:				
Aromatics	pct.	D1319	(1) 8	(1) 27
Paraffins, Naphthenes, Olefins		D1319	(2)	(2)
Flashpoint, min	°F	D93	120	130
	(°C)		(48.9)	(54.4)
Viscosity, centistokes		D445	1.6–2.0	2.0–3.2

[1] Minimum.
[2] Remainder.

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[FR Doc. 92-9991 Filed 5-6-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 61, 62, and 75

RIN 3067-AB70

National Flood Insurance Program Coverage and Sales

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This final rule amends the National Flood Insurance Program (NFIP) regulations dealing with flood insurance coverage, premiums, and commissions for agents, including revisions to the Standard Flood Insurance Policy (SFIP) terms and provisions. The amendments involve revision to the commissions paid to property insurance agents and brokers ("producers") selling flood insurance policies issued by the NFIP through its servicing contractor; increase in the deductibles (building and contents, separately) for those flood insurance policies which are rated using the subsidized rates, i.e., "chargeable rates", established pursuant to sections 1308 (a)(1) and (a)(2) and 1336(b)(1) of the National Flood Insurance Act of 1968, as amended 42 U.S.C. 4015 and 42 U.S.C. 4056; increase in the probation additional premium for flood insurance policies issued on properties located in communities which are on probation; and other technical or editorial changes. This final rule is necessary (1) to eliminate the administrative burden experienced by insurance agents and the NFIP servicing contractor because of the paperwork and record-keeping involved with the dual commission rate system and (2) to effect an increase in the revenues to the National Flood Insurance Fund, from which all expenses for operation of the NFIP are derived. These changes are intended to achieve a greater administrative and fiscal effectiveness in the operation of the NFIP and lessen the burdens on those property insurance agents and brokers ("producers") who are selling NFIP Direct policies.

EFFECTIVE DATE: This rule is effective October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-3419.

SUPPLEMENTARY INFORMATION: On September 16, 1991, FEMA published in the **Federal Register**, 56 FR 46758, a proposed rule containing amendments to the NFIP regulations dealing with the commissions paid to property insurance agents and brokers ("producers") for the procurement of new flood insurance policies, and renewals thereof, on behalf of policyholders insured under the NFIP directly by the Federal Government through its servicing contractor (NFIP direct business). The proposed rule also contained amendments relating to revision to the SFIP terms pertaining to the deductibles for those flood insurance policies issued or renewed on and after January 1, 1992, which are rated using the subsidized rates, i.e., "chargeable rates", established pursuant to sections 1308 (a)(1) and (a)(2) and 1336(b)(1) of the National Flood Insurance Act of 1968, as amended, and to revision of the probation additional premium for flood insurance policies issued or renewed on properties located in communities which are placed on probation on and after January 1, 1992.

No comments were received concerning the commission changes or the increase in the probation additional premium for flood insurance policies issued or renewed on properties located in communities placed on probation. Therefore, those revisions are incorporated into the final rule as proposed, except that the effective date for the probation increase has been changed to October 1, 1992. The effective date of the commission changes, which was not mentioned in the proposed rule, is also October 1, 1992.

The only comment received during the 60-day comment period was from an association concerned with flood plain management issues. The association expressed opposition to the increase in the deductibles for flood insurance policies issued or renewed where subsidized rates, i.e., "chargeable rates", are used to calculate the premium. Concern was expressed that an increase in the deductibles would have an adverse impact on the existing policy base in that policyholders who are not required by a lender to carry the insurance will most likely not renew their policies because of what they may perceive as a diminished value of the policy. Concern was also expressed that the pre-FIRM policyholders are the group that probably can least afford an extra burden in the program.

While these are valid concerns, FEMA believes that, even with the increased deductibles, the flood insurance policies still provide significant benefits. It must be remembered that, as pointed out in the proposed rule, those buildings which are most likely to be insured using the subsidized rates are also the buildings most likely to be subject to a greater exposure to flood loss because of their having been built before the degree of flood risk had been ascertained. In carrying out its responsibility to develop the general terms and conditions of insurability for properties insured under the program (such as the types, classes, and locations of properties eligible for flood insurance, the nature and limits of loss or damage, appropriate loss deductibles, etc.), FEMA must comply with the statutory requirement for "* * * minimizing costs, and distributing burdens equitably among those who will be protected by flood insurance and the general public' (section 1302(d) of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4002). FEMA believes that this increase in the deductibles is reasonable to the insured (in light of the greater exposure to flood loss which the properties affected by this increase are subject to) and equitable to the general taxpayers who would be required to subsidize the program if FEMA had to exercise its borrowing authority because of an unusually heavy loss year and appropriations were necessary to repay the amount borrowed.

Regarding the impact that the increased deductibles may have on the existing policy base, such concern has been raised in the past whenever FEMA has found it necessary to make changes in the program such as increasing the rates or limiting the coverage. However, experience has not shown that a large reduction in the policyholder base has occurred in the past when, for risk management or cost containment purposes, it has been necessary to either restrict coverage or raise the rates. Therefore, the revisions to the deductibles for flood insurance policies issued or renewed where subsidized rates, i.e., "chargeable rates", are used to calculate the premium are incorporated into the final rule as proposed, except that the effective date has been changed from January 1, 1992, to October 1, 1992.

This final rule also includes a revision in part 75 to add the State of Kentucky to the list of states which qualify as self-insurers. This state was not included in the proposed rule because it was not approved until September 24, 1991.

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

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, and will not have a significant economic impact on a substantial number of small entities. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

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 Parts 59, 61, 62, and 75

Flood insurance, Flood plains.

Accordingly, 44 CFR parts 59, 61, 62, and 75 are amended as follows:

PART 59—[AMENDED]

1. The authority citation for part 59 is revised 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.

§ 59.1 [Amended]

2. Section 59.1 is amended as follows:

a. By adding at the end of the definition of "area of special flood hazard", the following sentence: "For purposes of these regulations, the term 'special flood hazard area (SFHA)' is synonymous in meaning with the phrase 'area of special flood hazard'."

b. By removing the definition of "Associate Director".

c. By adding, alphabetically, a definition of "Special flood hazard area" to read as follows:

* * * * *

Special flood hazard area—see "area of special flood hazard".

* * * * *

§ 59.4 [Amended]

3. Section 59.4 is amended by removing at the end of paragraph (c) the phrase "(39 FR 26186–26193, July 17, 1974; 40 FR 16710, April 14, 1975; 40 FR 54277–54278, November 21, 1975; and 41 FR 2426, January 16, 1976)" and adding in place thereof the phase "(54 FR 29666–29695, July 13, 1989)".

§ 59.24 [Amended]

4. Section 59.24 is amended as follows:

a. By removing in paragraph (b)(3), the phrase "when the probation is to begin on or after October 1, 1986,".

b. By removing in the eighth sentence of paragraph (b) all of the language to the end of the paragraph after the phrase "on or after October 1, 1986," and adding in place thereof the phrase "but prior to October 1, 1992, an additional premium of $25.00 shall be charged on each such policy newly issued or renewed during the one-year period beginning on the date the community is placed on probation and during any successive one-year periods that begin prior to October 1, 1992."

c. By adding two new sentences to the end of paragraph (b) as follows: "Where a community's probation begins on or after October 1, 1992, the additional premium described in the preceding sentence shall be $50.00, which shall also be charged during any successive one-year periods during which the community remains on probation for any part thereof. This $50.00 additional premium shall further be charged during any successive one-year periods that begin on or after October 1, 1992, where the preceding one-year probation period began prior to October 1, 1992.

PART 61—[AMENDED]

5. The authority citation for part 61 is revised 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.

§ 61.5 [Amended]

6. Section 61.5 is amended as follows:

a. In paragraph (d) by adding the designation "(1)" after "(d)", and by revising newly designated paragraph (d)(1) to read as follows:

§ 61.5 Special terms and conditions.

* * * * *

(d)(1) Each loss sustained by the insured is subject to a deductible provision under which the insured bears a portion of the loss before payment is made under the policy. In the case of any flood insurance policy issued or renewed for a property located in an Emergency Program community or for any property located in a Regular Program community in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for buildings built before the effective date of the Flood Insurance Rate Map (FIRM) are used to compute the premium, the amount of the deductible for each loss occurrence is:

(i) For structural (i.e., insured building) losses, $750.00; and

(ii) For contents (i.e., insured personal property) losses, $750.00.

* * * * *

b. By adding the designation "(3)" before the paragraph beginning with the words "Optional Deductibles, All Zones, available as follows:", and by adding a new paragraph (d)(2) to read as follows:

* * * * *

(2) For policies other than those described in paragraph (d)(1) of this section, the amount of the deductible for each loss occurrence is:

(i) For structural (i.e., insured building) losses, $500.00; and

(ii) For contents (i.e., insured personal property) losses, $500.00.

* * * * *

§ 61.15 [Removed]

7. Section 61.15 is removed in its entirety.

§ 61.16 [Amended]

8. Section 61.16 is amended by removing the phrase "that has been placed on probation on or after October 1, 1986, is $25.00." and adding in place thereof the phrase "placed on probation prior to October 1, 1992, is $25.00. Where the community was placed on probation on or after October 1, 1992, the additional premium charge is $50.00.".

Appendix A(1)—[Amended]

9. Appendix A(1) of part 61 is amended as follows:

a. At Article II—Definitions, in the definition of "Direct Physical Loss by or from Flood", remove the phrase "for buildings in an amount up to the amount of the minimum building deductible" and add in place thereof, the phrase "for buildings in an amount not to exceed $500" and remove the phrase "for contents in an amount up to the amount of the minimum contents deductible." and add in place thereof, the phrase "for contents in an amount not to exceed $500.".

b. At Article II—Definitions, in the definition of "Probation additional premium," add a period after the phrase "44 CFR 59.24" and remove the rest of the sentence.

c. At Article IV—Property Covered (Subject to "Property Not Covered" Provisions), in paragraph A.7. remove the phrase "up to the amount of the minimum building deductible." and add in place thereof the phrase "not to exceed $500.".

d. At Article VI—Deductibles, redesignate paragraph C. as paragraph D.; amend newly redesignated paragraph D by removing the word "The" the first time it is used and adding in place thereof the phrase "For policies other than those described in paragraph C. above, the"; and add a new paragraph C., to read as follows:

* * * * *

C. For any flood insurance policy issued or renewed for a property located in an Emergency Program community or for any property located in a Regular Program community in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for buildings built before the effective date of the Flood Insurance Rate Map (FIRM) are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: We shall be liable only when such loss exceeds $750.00, or the amount of any higher deductible which you selected when you applied for this insurance or when you raised the deductible by endorsement.

* * * * *

Appendix A(2)—[Amended]

10. Appendix A(2) of part 61 is amended as follows:-

a. At Article II—Definitions, in the definition of "Direct physical loss by or from flood", remove the phrase "for buildings in an amount up to the amount of the minimum building deductible" and add in place thereof, the phrase "for buildings in an amount not to exceed $500" and remove the phrase "for contents in an amount up to the amount of the minimum contents deductible." and add in place thereof, the phrase "for contents in an amount not to exceed $500.".

b. At Article II—Definitions, in the definition of "Probation additional premium," add a period after the phrase "44 CFR 59.24" and remove the rest of the sentence.

c. At Article IV—Property Covered (Subject to "Property Not Covered" Provisions) in paragraph A.3. remove the phrase "up to the amount of the minimum building deductible." and add in place thereof the phrase "not to exceed $500.".

d. At Article VI—Deductibles, is revised to read, as follows:

Article VI—Deductibles

A. Each loss to the insured property is subject to a deductible provision under which the Insured bears a portion of the loss before payment is made under the policy.

B. The loss deductible shall apply separately to each building loss and contents loss including, as to each, any debris removal expenses.

C. For any flood insurance policy issued or renewed for a property located in an Emergency Program community or for any property located in a Regular Program community in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for buildings built before the effective date of the Flood Insurance Rate Map (FIRM) are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $750.00, or the amount of any higher deductible which the Insured selected when the Insured applied for this insurance or when the Insured raised the deductible by endorsement.

D. For policies other than those described in paragraph C. above, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $500.00, or the amount of any higher deductible which the Insured selected when the Insured applied for this insurance or when the Insured raised the deductible by endorsement.

PART 62—[AMENDED]

11. The authority citation for part 62 is revised 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.

12. Section 62.6 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 62.6 Minimum commission.

(a) * * *

(1) In the case of a new or renewal policy, the following commissions shall apply based on the total premiums paid for the policy term:

Premium amount	Commissions (percent)
First $2,000 of Premium	15
Excess of $2,000	5

(2) In the case of mid-term increases in amounts of insurance added by endorsements, the following commissions shall apply based on the total premiums paid for the increased amounts of insurance:

Premium amount	Commissions (percent)
First $2,000 of Premium	15
Excess of $2,000	5

* * * * *

PART 75—[AMENDED]

13. The authority citation for part 75 is revised 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.

§ 75.14 [Amended]

14. Section 75.14 is amended by adding the word "Kentucky," after the word "Iowa," and before the word "Maine," and by removing the word "Oklahoma,".

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

Dated: April 20, 1992.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92–10536 Filed 5–6–92; 8:45 am]

BILLING CODE 6718–05–M

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44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance for the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

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

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

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.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 is revised to read as follows:

PART 67—[AMENDED]

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Moody (town), St. Clair County (FEMA Docket No. 7039)	
Little Cahaba River:	
About 1100 feet downstream of Moody Parkway	*647
Just upstream of Park Avenue	*672
About 2600 feet upstream of Park Avenue	*676
Maps available for inspection at the Town of Moody, Rt. 5, Moody, Alabama.	
ARKANSAS	
Russellville (city), Pope County (FEMA Docket No. 7039)	
Engineers Ditch:	
Approximately 0.2 river mile upstream of confluence with Prairie Creek	*334
Approximately 0.4 river mile upstream of West 3rd Place	*371
Engineers Tributary:	
At confluence with Engineers Ditch	*348
Approximately 0.2 river mile upstream of South Vancouver Street	*367
Prairie Creek:	
Approximately 0.3 river mile upstream of confluence of Engineers Ditch	*334
Upstream of State Route 326	*384
Prairie Creek Tributary:	
At confluence with Prairie Creek	*363
Upstream of State Route 326	*386
Whig Creek:	
Approximately .5 river mile downstream of State Route 7	*323
Upstream side of Union Pacific Railroad	*396
Whig Creek Tributary:	
At confluence with Whig Creek	*345
Approximately 0.5 river mile upstream of East 16th Street	*363
Illinois Bayou:	
At confluence with Arkansas River	*339
Approximately 530 feet upstream of Point View Road	*346
Arkansas River:	
At State Route 7	*323
At confluence of Illinois Bayou	*339
Maps available for inspection at the Planning and Zoning Department, 200 Block W. 2nd Street, Russellville, Arkansas.	
ARIZONA	
Yavapai County (unincorporated areas) (FEMA Docket No. 7034)	
South Rocky Boy Wash:	
At confluence with Model Creek	*4,499
Just above Aggie Hodge Road	*4,526
Approximately 4,750 feet above Aggie Hodge Road	*4,575