approved them. The section number is § 151.1516 and the corresponding OMB approval number is OMB Control Number 2115–0598.

Federalism

No comments were received on the Federalism implications of this rule. The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The authority to issue regulations requiring ballast water management practices for vessels navigating the Hudson River, north of the George Washington Bridge, after operating beyond the EEZ, has been committed to the Coast Guard by the Act. Standardizing the minimum requirements for these vessels is necessary to effectively prevent further introductions of nonindigenous species. Therefore, the Coast Guard intends it to preempt state and local regulations that are inconsistent with the requirements of this final rule. These regulations were developed in consultation with the Task Force which is charged with coordinating among, and providing technical assistance to, regional, State, and local entities regarding environmentally sound approaches to prevention and control of aquatic nuisance species.

Environment

No comments were received on the environmental implications of this rule. The Coast Guard considered the environmental impact of this final rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a Finding of No Significant Impact are available for inspection or copying where indicated under ADDRESSES. The exchange of ballast water in open ocean will benefit the Hudson River environment and the Great Lakes environment by helping to prevent potential infestations of nonindigenous species through ballast water emptied into the Hudson River north of the George Washington Bridge and transferred through the Hudson River and into the Great Lakes. Introduction of nonindigenous nuisance species through the ballast water of vessels has caused millions of dollars of damage to date in the Great Lakes area.

Initial study has concluded that the amount of vessels' seawater-ballast to be discharged into the Hudson River will constitute such a small volume that no change in the salinity or temperature levels will occur. Species contained in water collected from the open ocean are unlikely to survive a fresh water environment. Any nuisance species contained in the ballast water will not therefore, create a new infestation.

While these regulations will help to prevent potential infestations of species introduced through the ballast water of vessels, data from the Army Corps of Engineers shows that no vessel traveled north of the George Washington Bridge in a light cargo load condition after operating beyond the EEZ. This indicates that these vessels carried no ballast water. Therefore, it is anticipated that few vessels will actually be discharging water into the Hudson River. Therefore, the Coast Guard has concluded that the regulations will have no negative impact on the environment.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 151, subpart C as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

Subpart C—Ballast Water Management for Control of Nonindigenous Species

1. The authority citation for subpart C of part 51 continues to read as follows:

Authority: 16 U.S.C. 4711; 49 CFR 1.46.

2. Section 151.1502 is revised to read as follows:

§ 151.1502 Applicability.

This subpart applies to each vessel that carries ballast water and that after operating on the waters beyond the Exclusive Economic Zone during any part of its voyage enters the Snell Lock at Massena, New York, or navigates north of the George Washington Bridge on the Hudson River, regardless of other port calls in the United States or Canada during that voyage.

3. In § 151.1504, the definitions of *Captain of the Port (COTP)* and *Voyage* are revised to read as follows:

§ 151.1504 Definitions.

* * * * *

Captain of the Port (COTP) means the Coast Guard officer designated as COTP of either the Buffalo, NY, Marine Inspection Zone and Captain of the Port Zone or the New York, NY, Captain of the Port Zone described in part 3 of this chapter or an official designated by the COTP.

* * * * *

Voyage means any transit by a vessel destined for the Great Lakes or the Hudson River, north of the George Washington Bridge, from a port or place outside of the EEZ, including intermediate stops at a port or place within the EEZ.

4. Section 151.1506 is revised to read as follows:

§ 151.1506 Restriction of operation.

No vessel subject to the requirements of this subpart may be operated in the Great Lakes or the Hudson River, north of the George Washington Bridge, unless the master of the vessel has certified, in accordance with § 151.1516, that the requirements of this subpart have been met.

5. In § 151.1510, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 151.1510 Ballast water management.

(a) * * *

(1) Carry out an exchange of ballast water on the waters beyond the EEZ, in a depth exceeding 2000 meters, prior to entry into the Snell Lock, at Massena, New York, or prior to navigating on the Hudson River, north of the George Washington Bridge, such that, at the conclusion of the exchange, any tank from which ballast water will be discharged contains water with a minimum salinity level of 30 parts per thousand.

(2) Retain the vessel's ballast water on board the vessel. If this method of ballast water management is employed, the COTP may seal any tank or hold containing ballast water on board the vessel for the duration of the voyage within the waters of the Great Lakes or the Hudson River, north of the George Washington Bridge.

* * * * *

Dated: December 21, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–32223 Filed 12–29–94; 8:45 am]

BILLING CODE 4910–14–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 86–7B]

Cable Compulsory License; Definition of Cable System

AGENCY: Copyright Office, Library of Congress.

ACTION: Amendment of cable license regulation.

SUMMARY: The Copyright Office is repealing the provision of its regulations regarding the eligibility of multipoint distribution service and multichannel multipoint distribution service operators for compulsory licensing under section 111 of the Copyright Act, and is amending other regulatory provisions necessitated by the Satellite Home Viewer Act of 1994.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On October 18, 1994, the President signed into law the Satellite Home Viewer Act of 1994 (1994 Home Viewer Act). Public Law 103–369, 108 Stat. 3477. The 1994 Home Viewer Act extends the Copyright Act's section 119 compulsory license for satellite carriers another five years, until December 31, 1999, and amends the section 111 cable compulsory license definitions of a "cable system" and the "local service area of a primary transmitter." These legislative amendments to the Copyright Act require certain changes in Subchapter A, Part 201 of the Copyright Office's regulations, 37 C.F.R.

Definition of a Cable System—Wireless Cable Systems

The 1994 Home Viewer Act amends the definition of a "cable system" in the section 111 cable compulsory license to include what are known as "wireless" cable systems. "Wireless" cable operators, which provide video retransmission in the Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS), are eligible for section 111 compulsory licensing for the broadcast signals that they retransmit to their subscribers.

By clarifying the section 111(f) definition of a "cable system" to include "wireless" cable operators, the 1994 Home Viewer Act expressly overruled a prior decision of the Copyright Office that "wireless" cable operators did not come within the section 111(f) definition. On January 29, 1992, the Office concluded its inquiry into the definition of a "cable system" in Docket No. 86–7B and issued a regulation denying both "wireless" cable operators and satellite carriers eligibility for the cable compulsory license. 57 FR 3284 (1992). This regulation added a new subsection (k) to section 201.17 of the Office's rules, the pertinent part of which provided:

Satellite Carriers and MMDS Not Eligible

Satellite carriers, satellite resale carriers, multipoint distribution services, and multichannel multipoint distribution services are not eligible for the cable compulsory license based upon an interpretation of the whole of section 111 of title 17 of the United States Code.

Subsequent to the issuance of this regulation, the Copyright Office delayed its effective date until January 1, 1995. 58 FR 40363 (July 28, 1993).

In light of the 1994 Home Viewer Act change to the "cable system" definition, the Office is amending § 201.17(k) to conform to the law and will treat "wireless" cable operators as being eligible for the cable compulsory license since January 1, 1978, the effective date of the Copyright Act and section 111. Satellite carriers, however, continue to remain ineligible for the section 111 license and the regulation is revised to notify satellite carriers when they may request a refund of royalties submitted to the Copyright Office under section 111.

Local Service Area of a Primary Transmitter

The other change to the cable compulsory license made by the 1994 Home Viewer Act is the broadening of the section 111(f) definition of the "local service area of a primary transmitter." The definition is used to determine when a broadcast station is local or distant to a cable operator, which in turn determines whether the operator must pay a royalty fee for that station. Effective July 1, 1994, the local service area of a broadcast station for copyright purposes also includes the area in which the station is entitled to insist upon carriage of its signal by a cable system (i.e. its must-carry zone), in accordance with the rules of the Federal Communications Commission in effect on September 18, 1993, and any subsequent modification of those rules.

Satellite Carriers

Section 201.11(a) and (b) are amended to reflect passage of the 1994 Home Viewer Act, including the royalty rate and the definitional changes to section 119 of the Copyright Act.

List of Subjects in 37 CFR Part 201

Cable systems, satellite carriers, compulsory license.

Proposed Regulation

In consideration of the foregoing, part 201 of title 37, Code of Federal Regulations, is amended as follows:

PART 201—[AMENDED]

1. The authority citation for part 201 is revised to read as follows:

Authority: 17 U.S.C. 702.

§ 201.11 [Amended]

2. Section 201.11 is amended by removing "100–667" every place it appears and adding "103–369".

3. Section 201.11(e)(6) is amended by removing "twelve (12) cents per subscriber" and adding "17.5 cents per subscriber, or in the case of syndex-proof superstations as defined in 37 CFR 258.2, 14 cents".

4. Section 201.11(e)(7) is amended by removing "three (3)" and adding "six (6)".

§ 201.17 [Amended]

5. Section 201.17(a) is amended by removing ", as amended by Pub. L. 94–553,".

6. Section 201.17(b)(2) is amended in the first sentence by adding "microwave," after "cables,"; by removing "Notices required to be recorded by this section, and the"; and by removing ": (i) On the date of recordation with the Copyright Office, in the case of the preparation and filing of an Initial Notice of Identity and Signal Carriage Complement or notice of Change of Identity or Signal Carriage Complement; or (ii)".

6a. Section 201.17(b)(5) is amended by adding "and Pub. L. 103–369" at the end of the sentence before the period.

7. Section 201.17(h)(1)(i) is amended by removing "308.2(a)" and adding "256.2(a)".

7a. Section 201.17 in paragraphs (h)(1)(iii), (h)(2)(i), and (h)(3)(iii)(A) is amended by removing "308.2(c)" and adding "256.2(c)".

7b. Section 201.17(h)(9) is amended by removing "308(c)(2)" and adding "308.2(c)".

8. Section 201.17(k) is revised to read as follows:

§ 201.17 Statements of account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(k) Satellite carriers not eligible. Satellite carriers and satellite resale carriers are not eligible for the cable compulsory license based upon an interpretation of the whole of section 111 of title 17 of the United States Code. Any such entity who paid copyright royalties into the Copyright Office in an attempt to comply with 17 U.S.C. 111 may obtain a refund of such royalties by submitting a written request to the Chief, Licensing Division, Copyright Office, Library of Congress, Washington DC 20557 no later than March 1, 1995.

Dated: December 22, 1994.

Marybeth Peters,

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–32045 Filed 12–29–94; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 95

[FRL–5131–5]

Mandatory Patent Licenses Under Section 308 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On occasion, a party attempting to comply with a standard of the Clean Air Act (CAA) may be unable to meet the standard without resort to a patented technology. CAA section 308 provides a mechanism by which such a non-complying party may obtain a patent license where it has been unsuccessful in its attempts to obtain a license on its own. Under CAA section 308, the United States may require the owner of the patented technology to grant the non-complying party a patent license in exchange for a reasonable royalty if the patented technology is necessary to meet the requirements in certain sections of the CAA.

The North American Free Trade Agreement (NAFTA) imposes certain limits on the ability of the United States to force patent owners to grant licenses under their patents. Section 104(b) of the North American Free Trade Implementation Act requires EPA to issue a regulation conforming CAA section 308 with the mandatory patent licensing restrictions found in NAFTA article 1709(10).

EPA is issuing this rule to ensure that EPA's implementation of CAA section 308 conforms with the requirements of NAFTA article 1709(10). The rule establishes the policies and procedures EPA will follow prior to applying to the Attorney General for a mandatory license under a patent covering a technology necessary to enable compliance with the new stationary sources standards, hazardous air pollutants standards, or motor vehicle emission standards of the CAA.

EFFECTIVE DATE: January 30, 1995.

ADDRESSES: Materials relevant to this rulemaking are contained in EPA Air Docket No. A–94–51: Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Air and Radiation Docket and Information Center is located in room M–1500, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Dockets may be inspected from 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Thomas Gorman, Patent Counsel (Mail Code 2379), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Phone: (202) 260–1339.

SUPPLEMENTARY INFORMATION:

I. Authority

This rule is promulgated under the authority of CAA section 308, as amended, 42 U.S.C. 7608, and the North American Free Trade Agreement Implementation Act, Public Law No. 103–182, section 104, 107 Stat. 2057, 2064 (1993).

II. Background

Section 308 of the Clean Air Act provides for mandatory licensing of patented technologies needed to meet certain CAA requirements. Under section 308, the United States can require the owner of a patented technology that is necessary to enable another party's compliance with certain limitations of the Clean Air Act to permit the other party to practice the patented technology in exchange for a reasonable royalty set by a Federal court. In order to compel the licensing of a patent under section 308, the EPA Administrator must ask the Attorney General to certify to a Federal district court that the following conditions are satisfied:

(a) The patent must be necessary for compliance with the standards of the CAA sections 111, 112 or 202;

(b) The patent right must be actively in use or intended for public or commercial use and not otherwise reasonably available;

(c) No reasonable alternatives to licensing the patent can exist for meeting the specified CAA standards; and

(d) Failure to license the patent may cause reduced competition or monopoly conditions in any area of trade.

Upon certification of the above conditions to a Federal district court by the Attorney General, the court may then order the patent holder to license the patent under terms and conditions determined by the court after a hearing.

Chapter 17 of the NAFTA addresses intellectual property issues generally and article 1709 addresses patents specifically. NAFTA article 1709 promotes the availability of patent protection for a broad range of inventions and also limits the scope of permissible violations of patent rights. The latter function is performed by paragraph 10 of article 1709, which sets conditions for violating a patent holder's right to decide the conditions for practice of the holder's patent.

NAFTA Article 1709(10) sets specific conditions that must be met by the compulsory patent licensing statutes of any member country. The conditions are as follows:

(a) Authorization of each compulsory license of a patent must be considered on the individual merits;

(b) Any proposed compulsory licensee already must have made efforts to obtain authorization from the patent holder;

(c) The scope and duration of an authorized compulsory patent license must be limited;

(d) An authorized compulsory patent license must be non-exclusive;

(e) An authorized compulsory patent license must be non-assignable;

(f) An authorized compulsory patent license must be predominantly for supply of the domestic market;

(g) The authorization of the compulsory patent license must be terminable when the circumstances that led to the authorization cease to exist;

(h) Patent holders must be paid adequate compensation;

(i) Authorization decisions must be subject to judicial or other independent review;

(j) Compensation rates must be subject to judicial or other independent review;

(k) When an authorized compulsory use is necessary to remedy a practice determined after judicial or administrative process to be anti-competitive, a member country is allowed greater latitude in applying conditions (a)-(j), including noncompliance with conditions (b) and (f); and

(l) Authorization of the use of a patent in order to permit exploitation of another patent shall not be granted except as a remedy for an adjudicated violation of laws directed against anti-competitive practices.

No direct conflict exists between NAFTA article 1709(10) and CAA section 308. However, section 308 does not address a number of the NAFTA conditions. The following rule establishes the policies and procedures that EPA will follow before applying to the Attorney General, pursuant to CAA section 308, for a mandatory license under a patent covering a technology necessary to enable compliance with CAA sections 111, 112 or 202. The procedures in the rule ensure that EPA's implementation of CAA section 308 will conform to article 1709(10) of the NAFTA.

Section 95.1 of the rule sets forth definitions of a number of terms used in the rule. Section 95.2 identifies who is entitled to petition the EPA for a mandatory patent license under section 308 and the required contents of such petitions. Section 95.3 identifies findings that EPA will have to make prior to making application to the Attorney General for a mandatory patent license under CAA section 308. These findings reflect the requirements of CAA section 308 and NAFTA Article 1709(10). Section 95.4 of the rule sets forth certain limitations that will be included in all mandatory patent licenses for which EPA makes application to the Attorney General under CAA section 308. These limitations are in accord with the requirements of CAA section 308 and NAFTA article 1709(10).

EPA published this rule in a notice of proposed rulemaking published on August 29, 1994 (59 FR 44390). EPA received three comments in response to the notice of proposed rulemaking. Each of the three comments expressed the concern that the proposed rule might be used to require mandatory licensing of patented products or processes that are only marginally related to reducing air pollution. Each comment suggested that the language of the proposed rule should be amended to state that mandatory patent licenses under CAA section 308 may be required only for patents relating to air pollution control.

This rule is not intended to limit the technologies for which mandatory patent licenses may be sought under CAA section 308 more than is already provided in CAA section 308. That is, the technology must be necessary to enable compliance with CAA section 111 (new stationary sources standards), section 112 (hazardous air pollutants), or section 202 (motor vehicle emission standards). However, EPA notes that under the rule, the EPA Administrator may apply to the Attorney General for a mandatory patent license pursuant to CAA section 308 only after expressly finding that the patented technology is not otherwise reasonably available, and that there are no other reasonable alternatives for accomplishing compliance with CAA section 111, 112 or 202. These requirements help ensure that a mandatory patent license will not be ordered pursuant to this rule where the patent is only marginally related to meeting the standards of the CAA.

III. Procedural Requirements

A. Review Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB), and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not "significant" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule codifies the existing procedures for application of CAA section 308 and imposes no new impacts on large or small entities. Therefore, no regulatory flexibility analyses has been prepared.

D. Review Under the Paperwork Reduction Act

The information collection requirements in this rule have been submitted to the Office of Management and Budget (OMB) under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection document has been prepared by EPA (ICR No. 1714.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA Mail Code 2136, 401 M Street SW., Washington, DC 20460, or by calling (202) 260–2740.

The public reporting burden for this collection of information would be a one-time burden for each petitioner. The burden was estimated on the basis of the number of hours needed to complete a single petition, along with the associated cost.

Completing a petition was estimated to require 21 hours at a cost of $1482. This includes time for reviewing instructions, gathering materials supporting the patent license, identifying other interested parties, and composition of a statement of facts upon which the petition is based. EPA received no comments regarding this information collection requirement. ICR No. 1714.01 was approved by OMB, Control Number 2060–0307, on October 3, 1994. Unless renewed, ICR No. 1714.01 will expire on October 31, 1997

List of Subjects in 40 CFR Part 95

Environmental protection, Administrative practice and procedure, Air pollution control, Inventions and patents, Patent licensing, North American Free Trade Agreement (NAFTA), Reporting and recordkeeping requirements.

Dated: December 23, 1994.

Carol M. Browner,

Administrator.

Title 40, Code of Federal Regulations, is amended by adding part 95 as follows:

PART 95—MANDATORY PATENT LICENSES

Sec.
95.1 Definitions.
95.2 Petition for mandatory license.
95.3 Findings prior to application to Attorney General.
95.4 Limitations on mandatory licenses.

Authority: 42 U.S.C. 7609; Sec. 104, Pub. L. 103–182, 107 Stat. 2057, 2064.

§ 95.1 Definitions.

(a) As used in this part, all terms not defined in this section shall have the meaning given them by the Act.

(b) *Act* means the Clean Air Act, as amended (42 U.S.C. §§ 7401–7671).

(c) *Agency* means the Environmental Protection Agency.

(d) *Administrator* means the Administrator of the Environmental Protection Agency.

§ 95.2 Petition for mandatory license.

(a) Any party required to comply with sections 111, 112 or 202 of the Act (42 U.S.C. 7411, 7412 or 7521) may petition to the Administrator for a mandatory patent license pursuant to section 308 of the Act (42 U.S.C. 7608), under a patent that the petitioner maintains is necessary to enable the petitioner to comply with Sections 111, 112 or 202 of the Act.

(b)(1) Each petition shall be signed by the petitioner and shall state the petitioner's name and address. If the petitioner is a corporation, the petition shall be signed by an authorized officer of the corporation, and the petition shall indicate the state of incorporation. Where the petitioner elects to be represented by counsel, a signed notice to that effect shall be included with the petition at the time of filing.

(2) Each petition shall include a copy of the patent under which a mandatory patent license is sought. The petition shall identify all current owners of the patent and shall include a copy of all assignment documents relevant to the patent that are available from the United States Patent and Trademark Office.

(3) Each petition must identify any person whose interest the petitioner believes may be affected by the grant of the license to which the petition is directed.

(4) Each petition must contain a concise statement of all of the essential facts upon which it is based. No particular form of statement is required. Each petition shall be verified by the petitioner or by the person having the best knowledge of such facts. In the case of facts stated on information and belief, the source of such information and grounds of belief shall be given. The statement of facts shall include the following:

(i) An identification of the provisions of the Act and/or regulations thereunder that the petitioner maintains petitioner will be able to comply with if the petitioner is granted the patent license that is the subject of the petition;

(ii) An identification of the nature and purpose of the petitioner's intended use of the patent license;

(iii) An explanation of the relationship between the patented technology and the activities to which petitioner proposes to apply the patented technology, including an estimate of the effect on such activities stemming from the grant or denial of the patent license;

(iv) A summary of facts demonstrating that the patent under which a mandatory patent license is sought is being used or is intended for public or commercial use;

(v) An explanation of why a mandatory patent license is necessary for the petitioner to comply with the requirements of sections 111, 112 or 202 of the Act, and why the patented technology is not otherwise available;

(vi) An explanation of why there are no other reasonable alternatives for accomplishing compliance with sections 111, 112 or 202 of the Act;

(vii) An explanation of why the unavailability of a mandatory patent license may result in a substantial lessening of competition or a tendency to create a monopoly in any line of commerce in any section of the United States;

(viii) A summary of efforts made by the petitioner to obtain a patent license from the owner of the patent, including the terms and conditions of any patent license proposed by petitioner to the patent owner; and

(ix) The terms, if any, on which the owner of the patent has proposed to grant the petitioner a patent license.

(5) Each petition shall include a proposed patent license that states all of the terms and conditions that the petitioner proposes for the patent license.

(6) Petitions shall be addressed to the Assistant Administrator for Air and Radiation, Mail Code 6101, U.S. Environmental Protection Agency, Washington, DC 20460.

(c) Petitions that do not include all of the information required in paragraph (b) of this section shall be returned to the petitioner. The petitioner may supplement the petition and resubmit the petition.

(d) If the Administrator, or the Administrator's designee, finds that the criteria in § 95.3 are not met, or otherwise decides to deny the petition, a denial of the petition shall be sent to the petitioner, along with an explanation of the reasons for the denial.

(e) If the Administrator, or the Administrator's designee, finds that the criteria in § 95.3 are met and decides to apply to the Attorney General for a patent license under section 308 of the Act, notice of such application shall be given to the petitioner, along with a copy of the application sent to the Attorney General.

§ 95.3 Findings prior to application to Attorney General.

The Administrator, or the Administrator's designee, may apply to the Attorney General for a mandatory patent license pursuant to section 308 of the Act (42 U.S.C. 7608) either in response to a petition under § 95.2 or on the Administrator's or designee's own initiative, only after expressly finding that each one of the following mandatory criteria is met:

(a) The application is for a patent license covering no more than one patent;

(b) The party to whom the proposed patent license is to be granted has presented the Administrator or designee with evidence that such party has made reasonable efforts to obtain a patent license from the patent owner with terms similar to the license terms to be proposed in the application to the Attorney General;

(c) The patent under which a patent license is sought in the application to the Attorney General is being used or is intended for public or commercial use;

(d) The mandatory patent license is necessary for a party to comply with the requirements of sections 111, 112 or 202 of the Act (42 U.S.C. 7411, 7412 or 7521);

(e) The patented technology is not otherwise reasonably available, and there are no other reasonable alternatives for accomplishing compliance with sections 111, 112 or 202 of the Act (42 U.S.C. 7411, 7412 or 7521); and

(f) The unavailability of a mandatory patent license may result in a substantial lessening of competition or a tendency to create a monopoly in any line of commerce in any section of the United States.

§ 95.4 Limitations on mandatory licenses

(a) If the Administrator, or the Administrator's designee, decides to apply to the Attorney General for a mandatory patent license in accordance with § 95.3, the application shall include a proposed patent license with the following limitations:

(1) The scope and duration of the patent license shall be limited to that necessary to permit the proposed licensee to comply with the requirements the Act;

(2) The patent license shall be nonexclusive;

(3) The patent license shall be non-assignable, except with that part of the enterprise or goodwill that enjoys the license;

(4) The patent license shall be for use of the licensed technology in the United States only;

(5) The patent license shall extend only to those uses necessary to enable the licensee to comply with sections 111, 112 or 202 of the Act (42 U.S.C. 7411, 7412 or 7521);

(6) The patent license shall provide for termination, subject to adequate protections of the legitimate interests of the licensed party, when the circumstances that made the compulsory patent license necessary cease to exist and are unlikely to recur; and

(7) The patent license shall provide for adequate remuneration that takes into account the economic value of the license.

(b) The Administrator, or the Administrator's designee, may decide as appropriate to include additional conditions, terms or limitations on the scope of the patent license for which application is made to the Attorney General.

[FR Doc. 94-32268 Filed 12-29-94; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7608]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

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

EFFECTIVE DATE: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

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

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646-3619.

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

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

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

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

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

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