

(2) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act that have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) Lands referred to in Section 19(b) of the Alaska Native Claims Settlement Act.

In promulgating the Federal subsistence regulations, the Secretaries took the position that (1) most navigable waters, and (2) lands selected by, but not conveyed to, the State and Native Corporations, are not subject to the Section 804 subsistence preference. This position was based upon a finding that these waters and lands are not covered by the definition of "public lands." See, for example, 55 FR 27115 (June 29, 1990).

The petition submitted to the Secretaries by the Northwest Arctic Regional Council (NARC), Stevens Village Council, Kawerik, Inc., Copper River Native Association, Alaska Federation of Natives, Alaska Intertribal Council, RurAL CAP, and the Dinyee Corporation seeks rulemaking to reverse and/or clarify this position. The petition requests that:

(1) An interpretive rule be promulgated that states that the Federal government has the authority to regulate hunting and fishing on non-public lands; and

(2) An interpretive rule be promulgated that places selected but not conveyed lands within the purview of the subsistence priority.

The petitioners rely for their first assertion upon law established in the contiguous 48 states that establishes Federal authority to regulate activities on non-Federal lands to protect activities on Federal lands. The petitioners cite case law that finds two sources for this authority: The Property Clause of the Constitution and Federal law preemption of state law. Petitioners find support for their second point in the legislative history of and management provisions in ANILCA, and place particular reliance on section 906(o)(2) of ANILCA. The petitioners also examine the definitions of "public lands" and "federal lands" in light of the land management provisions.

The Federal Subsistence Board requests public review and comment in order to enable the Secretaries better to assess the impacts and concerns of the petition and to assist them in reaching a decision on its disposition.

Drafting Information

This notice was drafted under the guidance of Richard S. Pospahala, U.S.

Fish and Wildlife Service, Alaska Regional Office, Office of Subsistence Management, Anchorage, Alaska. The primary author was William Knauer of the same office.

Dated: January 20, 1995.

David B. Allen,

Acting Chair, Federal Subsistence Board.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 95-8-6858a; FRL-5148-5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District, Placer County Air Pollution Control District, San Diego County Air Pollution Control District, and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from marine vessel coating; graphic arts operations; paper, fabric and film coating; and storage of organic liquids.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before March 6, 1995.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section [A-5-3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's

Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123-1095.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Placer County Air Pollution Control District, 11464 B. Avenue, Auburn, CA 95603.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1096.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Erik H. Beck, Rulemaking Section [A-5-3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Internet Email: beck.erik@epamail.epa.gov. Telephone: (415) 744-1190.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the California SIP include: Bay Area Air Quality Management District (BAAQMD) Rule 8-43, "Surface Coating of Marine Vessels"; Placer County Air Pollution Control District (PCAPCD) Rule 212, "Storage of Organic Liquids"; San Diego County Air Pollution Control District (SDCAPCD) Rule 67.16, "Graphic Arts Operations"; SDCAPCD Rule 67.18, "Marine Coating Operations"; and San Joaquin Valley Unified Air Pollution Control District (SVUAPCD) Rule 4607, "Graphic Arts". These rules were submitted by the California Air Resource Board to EPA on September 28, 1994, December 19, 1994, October 19, 1994, December 22, 1994, and July 13, 1994 respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended act), that included the San Francisco Bay Area, Sacramento Metro Area, San Diego Area, and the San Joaquin Valley Air Basin. The San Joaquin Valley Air Basin is comprised of the following eight air pollution control districts (APCD): Fresno County APCD, Kern County APCD,¹ Kings County

¹ At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and

APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964, 40 CFR 81.305. Because some of these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.² 40 CFR 52.222. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

On March 20, 1991, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes the following counties, except for the Southeast Desert Air Basin portion of Kern County: Fresno County APCD, Kern County APCD,³ Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. Thus, Kern County Air Pollution Control District (KCAPCD) still exists, but only has authority over the Southeast Desert Air Basin portion of Kern County.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas

the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

² This extension was not requested for the following counties: Kern, Kings, Madera, Merced and Tulare. Thus, the attainment date for these counties remained December 31, 1982.

³ At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.⁴ EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. BAAQMD is moderate, PCAPCD is serious, SDCAPCD is severe, and the APCDs found in the San Joaquin Valley Air Basin (now collectively known as the SJVUAPCD) are serious⁵; therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline. KCAPCD was subject to EPA's SIP-Call, but was not subject to the RACT fix-up requirement and the May 15, 1991 deadline.⁶

Because EPA had previously given earlier submittals of these rules limited approval/limited disapproval, 18 month sanction clocks were started. These sanction clocks began on August 11, 1993, and September 29, 1993. For more information on these sanction clocks, please refer to the Interim final rule being published elsewhere in today's **Federal Register**.

The State of California submitted many revised RACT rules for incorporation into its SIP on July 13, 1994, September 28, 1994, October 19, 1994, December 19, 1994, and December 22, 1994, including the rules being acted on in this document. This document addresses EPA's proposed action for BAAQMD Rule 8-43, "Surface Coating of Marine Vessels;" PCAPCD Rule 212, "Storage of Organic Liquids;" SDCAPCD Rule 67.16, "Graphic Arts Operations"; SDCAPCD Rule 67.18, "Marine Coating Operations"; and SJVUAPCD Rule 4607, "Graphic Arts". BAAQMD adopted Rule

⁴ Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

⁵ The San Francisco Bay Area, Sacramento Metro Area, San Diego Area, and the San Joaquin Valley Air Basin retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

⁶ KCAPCD was not subject to the RACT fix-up requirement and the May 15, 1991 deadline because the Southeast Desert Air Basin portion of Kern County was not a pre-enactment nonattainment area, and thus, was not automatically designated nonattainment on the date of enactment of the Clean Air Act Amendments of 1990. (See § 107(d) and § 182(a)(2)(A) of the Clean Air Act Amendments of 1990.) However, the KCAPCD is still subject to the requirements of EPA's SIP-Call because the SIP-Call included all of Kern County. The substantive requirements of the SIP-Call are the same as those of the statutory RACT fix-up requirement.

8-43 on June 1, 1994. PCAPCD adopted Rule 212 on November 3, 1994. SDCAPCD adopted Rule 67.16 on September 20, 1994, and Rule 67.18 on December 13, 1994. SJVUAPCD adopted Rule 4607 on May 19, 1994. These submitted rules were found to be complete on July 22, 1994 (SJVUAPCD Rule 4607); November 22, 1994 (BAAQMD Rule 8-43); December 1, 1994 (SDCAPCD Rule 67.16); December 23, 1994 (PCAPCD Rule 212); and January 3, 1995 (SDCAPCD Rule 67.18). These findings of completeness are pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 appendix V.⁷ These revised SIP submittals are being proposed for approval into the SIP.

These rules control VOC emissions from graphic arts operations, the coating of paper, fabric and film products, the coating of marine vessels, and the storage of organic liquids. VOCs contribute to the production of ground-level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of

⁷ EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs applicable to these rules are entitled:

- *Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks* (EPA-450/2-78-047);
- *Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks*. (EPA-450/2-77-008);
- *Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts—Rotogravure and Flexography*. (EPA-450/2-78-033);

Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1, and in EPA's Alternative Control Technique (ACT) documents for offset lithography and marine coating. These documents are entitled *Alternative Control Techniques Document: Offset Lithographic Printing* (EPA 453/R-94-054) and *Alternative Control Techniques Document: Surface Coating Operations at Shipbuilding and Ship Repair Facilities* (EPA 453/R-94-932). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP. Also, the ACTs referenced provide technical guidance on the control of VOCs from their respective industries, similar to the guidance provided by the CTGs.

BAAQMD Rule 8-43, "Surface Coating of Marine Vessels" includes the following significant changes from the current SIP:

- Deleted "Alternate Emission Control Plan";
- Deleted "Small Business Provision";
- Added specific add-on control equipment efficiency standards;
- Revised references to test procedures;
- Simplified specialty coating limits table;
- Modified architectural coatings exemption;
- Added a definition of "Key Operating System Parameter";
- Revised coating records section;
- Created recordkeeping requirements for add-on controls;
- Modified the test method section. These modifications include:
 - Removed "Executive Officer's Discretion";
 - Added references to EPA test methods;
 - Added a test method for acid content.

PCAPCD Rule 212, "Storage of Organic Liquids" includes the following significant changes from the current SIP:

- Added an applicability section;
- Added a definition of "vapor pressure";
- Revised the definition of volatile organic compounds consistent with 40 CFR 51.100 (except that Rule 212 also regulates ethane);
- Revised recordkeeping section to require sources subject to the requirements of Title

V of the CAA retain their records for at least 5 years, and that other sources retain their records for at least 2 years;

- Revised the test method section by adding standard American Society for Testing and Materials (ASTM) and California Air Resources Board test methods.

SDCAPCD Rule 67.16, "Graphic Arts Operations" includes the following significant changes from the current SIP:

- Eliminated unapprovable test methods;
- Revised exemption language to clarify and to exempt some sources from some recordkeeping requirements;
- Revised compounds considered to be exempt from control by virtue of their lack of photochemical reactivity in forming ozone. These revisions match EPA requirements promulgated at 40 CFR 51.100;
- Revised the definition of Stationary Source to reference SDCAPCD Rule 20.1;
- Removed 1991 future effective dates for regulations regarding cleanup, since they are now in effect;
- Modified control device requirements to permit increased flexibility with the same overall capture and control efficiency;
- Deleted recordkeeping requirements regarding ozone depleters;
- Revised recordkeeping requirements for noncompliant coatings and for add-on control equipment;
- Modified test methods to reflect EPA policy and rectify previous rule deficiencies. These modifications include:
 - Removed reference to Bay Area Air Quality Management District Test Method 30 for evaluating the VOC content of non-heatset inks.
 - Removed reference to ASTM standard practice D-3960-87 for calculating VOC content of coatings and inks.

SDCAPCD Rule 67.18, "Marine Coating Operations" includes the following significant changes from the current SIP:

- Extended applicability to fresh water vessels;
- Exempted small coating users;
- Extended the limited antifoulant exemption;
- Established exemptions for materials regulated by Rules 66, 67.6, and 67.12;
- Established exemption for individuals performing coating on private vessels at their residence;
- Added definitions for a number of coatings, exempt compounds, and VOC content;
- Revised definitions of coating operation, high gloss coating, pleasure craft topcoat, pretreatment wash primer, repair and maintenance coating operation, touch-up operation, and volatile organic compound;
- Deleted definition of marine coating;
- Changed several coating limits;
- Added a reference to alternate emission control plan (approved SDCAPCD Rule 67.1) to allow flexible compliance with the coating limits;
- Increased stringency of the equipment cleanup section. The language was revised to establish detailed equipment requirements,

VOC content limits, and volatility constraints;

- Added VOC content and volatility restrictions on surface preparation;
- Clarified language relating to the add-on control device requirements;
- Clarified existing recordkeeping requirements and added additional recordkeeping requirements;
- Made numerous changes to the test method section.

SJVUAPCD Rule 4607, "Graphic Arts" includes the following significant changes from the current SIP:

- Revised the applicability of the rule to include paper, fabric, and film coating;
- Removed ability of sources to comply by reducing VOC usage from an arbitrary baseline, effective Nov. 19, 1995;
- Added recordkeeping requirement for add-on VOC control equipment;
- Added language establishing test requirements for capture efficiency;
- Modified equipment clean-up requirements;
- Revised and added many definitions;
- Revised the rule to remove deficiencies previously identified by EPA. These revisions include:
 - Modified the recordkeeping section to include requirements for fountain solutions and adhesives;
 - Modified the test method section to require testing for adhesives and fountain solutions;
 - Removed reference to Bay Area Air Quality Management District Test Method 30 for non-heatset inks;
 - Removed reference to California Air Resources Board Test Method 100 to determine VOC control efficiency;

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD Rule 8-43, "Surface Coating of Marine Vessels", PCAPCD Rule 212 "Storage of Organic Liquids", SDCAPCD Rules 67.16 and 67.18 ("Graphic Arts Operations" and "Marine Coating Operations"), and SJVUAPCD Rule 4607, "Graphic Arts", are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must

prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2). The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401-7671q.
Date signed: January 26, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95-2501 Filed 2-1-95; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7126]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations 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 remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed 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: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed 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 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

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

§ 67.4 [Amended]

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