

not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: December 24, 1996.

Valdas V. Adamkus,
Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.770 is amended by adding paragraph (c)(113) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(113) On February 13, 1996, and June 27, 1996, Indiana submitted rules for the control of volatile organic compound emissions from shipbuilding and ship repair operations in Clark, Floyd, Lake, and Porter Counties as a revision to the State Implementation Plan.

(i) *Incorporation by reference.* 326 Indiana Administrative Code 8–12: Shipbuilding or Ship Repair operations in Clark, Floyd, Lake, and Porter Counties, Section 1: Applicability, Section 2: Exemptions, Section 3: Definitions, Section 4: Volatile organic compound emissions limiting requirements, Section 5: Compliance requirements, Section 6: Test methods and procedures, and Section 7: Record keeping, notification, and reporting requirements. Adopted by the Indiana

Air Pollution Control Board September 6, 1995. Filed with the Secretary of State April 1, 1996. Published at Indiana Register, Volume 19, Number 8, May 1, 1996. Effective May 1, 1996.

[FR Doc. 97–1425 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 105–0012a; FRL–5673–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District; San Diego County Air Pollution Control District; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD), the San Diego County Air Pollution Control District (SDCAPCD), and the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate five rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of oxides of nitrogen (NO_x) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control NO_x emissions from boilers, steam generators, process heaters, electric utility boilers, internal combustion engines, and stationary gas turbines. The EPA is finalizing the approval of these revisions into the California SIP 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: This action is effective on March 24, 1997 unless adverse or critical comments are received by February 21, 1997. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75

Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301.

San Diego County Air Pollution Control District, Rule Development Section, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

Ventura County Air Pollution Control District, Rule Development Section, 669 County Square Drive, Ventura, CA 93003.

Written comments should be submitted to Andrew Steckel, Rulemaking Office (AIR–4), Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 95105.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: KCAPCD's Rule 425.2, Boilers, Steam Generators, and Process Heaters (Oxides of Nitrogen); Rule 427, Stationary Piston Engines (Oxides of Nitrogen); SDCAPCD's Rule 69.4, Stationary Reciprocating Internal Combustion Engines; VCAPCD's Rule 59, Electric Power Generating Equipment—Oxides of Nitrogen Emissions; and Rule 74.23, Stationary Gas Turbines. These rules were submitted by the California Air Resources Board (CARB) to EPA on February 11, 1994 (Rule 59), October 19, 1994 (Rule 69.4), May 25, 1995 (Rule 425.2), and March 26, 1996 (Rules 74.23 and 427).

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_x emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a notice of proposed rulemaking entitled "State Implementation Plans; Nitrogen Oxides

Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement) which describes the requirements of section 182(f). The NO_x Supplement should be referred to for further information on the NO_x requirements and is incorporated into this document by reference. Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_x ("major" as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. Kern County is classified as a serious nonattainment area.¹ San Diego County is classified as a serious nonattainment area, and Ventura County area is classified as severe for ozone.² All areas are subject to the RACT requirements of section 182(b)(2), cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technique guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_x CTGs issued before enactment and EPA has not issued a CTG document for any NO_x category since enactment of the CAA. The RACT rules covering NO_x sources and submitted as SIP revisions are expected to require final installation of the actual NO_x controls by May 31, 1995 for those sources where installation by that date is practicable.

This document addresses EPA's direct-final action for the KCAPCD's Rule 425.2, Boilers, Steam Generators, and Process Heaters (Oxides of Nitrogen); Rule 427, Stationary Piston Engines (Oxides of Nitrogen); SDCAPCD's Rule 69.4, Stationary Reciprocating Internal Combustion Engines; and for the VCAPCD's Rule 59, Electric Power Generating Equipment—Oxides of Nitrogen Emissions; and Rule 74.23, Stationary Gas Turbines. The KCAPCD adopted Rule 425.2 on April 6, 1995 and Rule 427 on January 1, 1996. The SDCAPCD adopted Rule 69.4 on September 27, 1994 and the VCAPCD

adopted Rule 59 on October 12, 1993 and Rule 74.23 on October 10, 1995. The submitted KCAPCD's Rule 425.2 was found to be complete on July 24, 1995 and Rule 427 on May 15, 1996. SDCAPCD's Rule 69.4 was found to be complete on October 21, 1994. VCAPCD's Rule 59 was found to be complete on April 11, 1994; and Rule 74.23 on May 15, 1996 pursuant to EPA's completeness criteria set forth in 40 CFR Part 51 Appendix V³ and are being finalized for approval into the SIP.

NO_x emissions contribute to the production of ground level ozone and smog. The five rules control emissions of NO_x from electric utilities and various industries used in a wide variety of applications. The rules were adopted as part of the KCAPCD's, SDCAPCD's, and VCAPCD's efforts to achieve and maintain the National Ambient Air Quality Standards (NAAQS) for ozone. All five rules are required to satisfy the mandates of the Clean Air Act requirements, and were submitted pursuant to the CAA requirements cited above.

EPA Evaluation

In determining the approvability of a NO_x 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 interpretations of these requirements, which form the basis for this action, appear in the NO_x Supplement and various other EPA policy guidance documents.⁴ Among these provisions is the requirement that a NO_x rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_x emissions.

For the purposes of assisting state and local agencies in developing NO_x RACT rules, EPA prepared the NO_x Supplement, cited above (57 FR 55620). In the NO_x Supplement, EPA provides guidance on how RACT should be determined for major stationary sources of NO_x emissions. The document sets RACT emission levels specifically for electric utility boilers. For all other

source categories, EPA expects States/Districts to establish RACT levels comparable to those levels for utility boilers taking into account cost, cost-effectiveness, and emission reductions.

While most of the guidance issued by EPA (previous to the NO_x Supplement) on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_x (see section 4.5 of the NO_x Supplement). In addition, pursuant to section 183(c), EPA has issued alternative control techniques documents (ACTs), that identify alternative controls for most categories of stationary sources of NO_x. The ACT documents provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_x. While providing guidance and information for States to use in making RACT determinations, the ACTs do not establish a presumptive norm for what is considered RACT for stationary sources of NO_x. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been issued by EPA to ensure that submitted NO_x RACT rules are fully enforceable and strengthen or maintain the SIP.

KCAPCD Rule 425.2 sets NO_x emission limits for units with annual heat input of 9 billion Btu or more at 70 parts per million (ppm) by volume for gas-fired units and 115 ppm for liquid-fired units. Emission limits are corrected to 3% oxygen. Rule 425.2 meets EPA's RACT guidance and May 31, 1995 implementation requirements by requiring that RACT be fully implemented by November 1997 and that interim measures including submission of a compliance plan and an application for authority to construct be met to ensure progress toward final compliance.

EPA established RACT levels for electric utility boilers and recommended for other source categories that States/Districts make RACT determinations comparable to those EPA established for electric utility boilers. This comparability should be based on several factors including cost, cost-effectiveness, and emission reductions.

The California Air Resources Board RACT/BARCT Guidance⁵ document for institutional, commercial, and industrial

¹ Kern County retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

² The San Diego and Ventura County Areas 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 56 FR 56694 (November 6, 1991). The San Diego Area was reclassified from severe to serious on February 21, 1995. See 60 FR 3771 (January 19, 1995).

³ 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).

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); and "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).

⁵ Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (RACT/BARCT guidance for ICI boilers), California Air Resources Board, July 18, 1991.

(ICI) boilers suggests a RACT limit of 70 ppm corrected to 3% O₂ for units fired with gaseous fuel and 115 ppm for units fired with fuels other than gas. EPA has used CARB's Guidance document in evaluating Rule 425.2 for consistency with the CAA's RACT requirements. Rule 425.2's RACT emission limits (70/115 ppm) are generally comparable to the emission limits of CARB's Guidance document and meet federal RACT requirements.

Kern Rule 427 contains different requirements depending upon the size of the engines. Engines rated greater than 50 bhp are required to conduct regular maintenance procedures. Engines rated greater than 250 bhp are required to meet the emissions limits by June 1997. The rule establishes RACT emission limits for engines rated 250 bhp or greater at 50 parts per million (ppm), 125 ppm, and 600 ppm for rich burn engines, lean burn engines, and diesel engines, respectively. In lieu of meeting the emissions limits, sources may install control equipment that reduces NO_x emissions by 90%, 80%, and 30% for rich-burn, lean-burn, and diesel engines, respectively. Although final compliance with the emissions limits is not required until 1999, the rule does require interim measures be met by 1995. Emission control plans and maintenance procedures are required in the interim to ensure progress toward final compliance with the emission limits in 1999.

San Diego Rule 69.4 describes emission limits and reduction requirements in two tables. One table establishes RACT concentration limits and the other table sets percent reduction limits. Rule 69.4 establishes RACT at 50 ppm for rich burn engines, 125 ppm for lean burn engines, and 700 ppm for diesel engines. The concentration limits are referenced to 15% oxygen on a dry basis. The alternative control device efficiencies are set at 90%, 80%, and 25% for rich, lean, and diesel engines, respectively. The rule requires the RACT limits be met by May 31, 1995 for existing engines and upon start-up for new engines.

The current SIP approved version of VCAPCD Rule 59 limits NO_x emission from boilers rated greater than or equal to 2,150 million British Thermal Units (MMBtu) to 0.10 pounds per megawatt-hour (lb/MW-hr) produced, and limits NO_x emissions from boilers rated less than 2,150 MMBtu to 0.20 lb/MW-hr produced. Final compliance with these limits is required by June 4, 1994 and June 4, 1996 respectively. The significant changes in the October 12, 1993 version of Rule 59 are: (1) boilers

under 2,150 million Btu per hour are now limited to 0.10 pound per megawatt-hour (lb/MW-hr) produced at loads at or above 43 megawatts (MW); and (2) the start-up duration of this exemption for auxiliary boilers has been changed from one hour to four hours. The additional reduction of NO_x emissions derived from this rule is part of VCAPCD's effort towards achieving the state and federal ozone standards.

VCAPCD's Rule 74.23 sets NO_x limits at 42 ppm (gas-fired) and 65 ppm (oil-fired) for units rated at or above 0.3 MW but less than 2.9 MW and for units rated 4 MW and greater, but operating at less than 877 hours per year. For all other units, the rule sets the following emission limits: (i) 25 ppm (gas-fired), corrected for turbine efficiency and 65 ppm (oil-fired) for units rated at or above 2.9 MW but less than 10 MW; (ii) 9 ppm (gas-fired) and 25 ppm (oil-fired) for units rated greater than 10 MW with selective catalytic reduction (SCR); and (iii) 15 ppm (gas-fired) and 42 ppm (oil-fired) for units rated greater than 10 MW with no SCR. Rule 74.23 meets EPA's RACT guidance and May 31, 1995 implementation requirements by requiring that BARCT limits be fully implemented by April 2001, and that interim measures including submitting a compliance plan and implementing interim emission limits be met to ensure progress toward the final emission limit of the rule.

The California Air Resources Board RACT/BARCT Guidance⁶ document for stationary gas turbines suggest RACT limits of 42 ppm for gas-fired units and 65 ppm for oil fired units. BARCT limits for units with SCR are 9 ppm and 25 ppm for gas-fired units and oil-fired units respectively. For units without SCR, the BARCT limits are 15 ppm (gas-fired units) and 42 ppm (oil-fired units). Rule 74.23 emission limits meet the values of CARB's RACT/BARCT limits, thereby meeting the CAA requirements for RACT.

EPA agrees that the RACT emissions limits established in the Kern Rules 425.2 and 427, the San Diego Rule 69.4, and the Ventura Rules 59 and 74.23 are consistent with the Agency's guidance and policy for making RACT determinations, and believes the rules satisfy the NO_x RACT requirement of the CAA for ICI boilers in Kern County, the I/C engines in Kern and San Diego Counties, the electric utility boilers and

the stationary gas turbines in Ventura County.

EPA is incorporating these rules into the SIP because they strengthen the SIP through the addition of enforceable measures such as NO_x emission limits, recordkeeping, test methods, definitions, and compliance tests. EPA believes all five rules for these source categories in each district satisfy the RACT requirements of the CAA. A more detailed discussion of the sources controlled, the controls required, and the analysis of how these controls meet RACT can be found in the Technical Support Document (TSD) for each rule available from the U.S. EPA Region IX office.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. All five rules meet RACT requirements for their particular category, and contain implementation dates consistent with the CAA and EPA's policy. Therefore, all five are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110 and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future 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.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 24, 1997, unless, by February 21, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 24, 1997.

⁶Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for the Control of Oxides of Nitrogen from Stationary Gas Turbines (RACT/BARCT guidance for gas turbines), California Air Resources Board, May 18, 1992.

Regulatory Process

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rules in today's Federal Register. These rules are not major rules as defined by section 804(2) of the APA as amended.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 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 population of less than 50,000.

SIP approvals under sections 110 and 301(a) 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, I certify that 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).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 23, 1996.
Felicia Marcus,
Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(195)(i)(B)(2), (C)(202)(i)(C)(5), (C)(221)(i)(A)(3), (C)(230)(i)(A)(2) and (C)(230)(i)(C) to read as follows:

§ 52.220 Identification of plan.

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- (c) * * *
- (195) * * *
- (i) * * *
- (B) * * *

(2) Rule 59, adopted on October 12, 1993.

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(202) * * *

(i) * * *

(C) * * *

(5) Rule 69.4, adopted on September 27, 1994.

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(221) * * *

(i) * * *

(A) * * *

(3) Rule 425.2, adopted on April 6, 1995.

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(230) * * *

(i) * * *

(A) * * *

(2) Rule 74.23, adopted on October 10, 1995.

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(C) Kern County Air Pollution Control District.

(I) Rule 427, adopted on January 25, 1996.

[FR Doc. 97-1078 Filed 1-21-97; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-7204]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

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

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Executive Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are