

this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, or on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.)

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

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

10. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

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

Because this rule proposes authorization of pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 23, 2008.

Walter W. Kovalick,

Acting Regional Administrator, Region 5.

[FR Doc. E8-27855 Filed 11-21-08; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA-B-1021]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition,

these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before February 23, 2009.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1021, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151, or (e-mail) bill.blanton@dhs.gov.

FOR FURTHER INFORMATION CONTACT:

William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3151 or (e-mail) bill.blanton@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs 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 BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. 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.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a

rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility

Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

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:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Garland County, Arkansas, and Incorporated Areas				
Molly Creek	Weston Road	+410	+409	City of Hot Springs.
	Approximately 450 feet upstream of Albert Pike Road/ US 270.	+541	+544	
Molly Creek Tributary 1	Stover Road (Formerly Marie St.)	+486	+484	City of Hot Springs.
	Molly Springs Road	+508	+506	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Hot Springs

Maps are available for inspection at Garland County Library, 1427 Malvern Ave., Hot Springs, AR 71901.

White County, Arkansas, and Incorporated Areas				
Deener Creek	Ella Street	None	+237	Unincorporated Areas of White County.
	Approximately 1994 feet upstream from Ella Street. ...	None	+240	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of White County

Maps are available for inspection at 119 West Arch Avenue, Searcy, AR 72143.

Barrow County, Georgia, and Incorporated Areas				
Apalachee River	Approximately 5,345 feet upstream of Loganville Highway.	None	+820	Unincorporated Areas of Barrow County, City of Auburn.
	Approximately 1,140 feet upstream of CSX Railroad ..	None	+905	

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Cedar Creek	Approximately 1,220 feet downstream of Miles Patrick Road.	None	+820	Unincorporated Areas of Barrow County, City of Winder.
	Approximately 470 feet downstream of Miles Patrick Road.	None	+822	
Tributary No. 1	At the confluence with Cedar Creek	None	+822	Unincorporated Areas of Barrow County, City of Winder.
Winder Reservoir	Approximately 50 feet downstream of Sims Road	None	+840	Unincorporated Areas of Barrow County.
	Entire Shoreline	None	+850	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Auburn

Maps are available for inspection at City Hall, 1369 Fourth Avenue, Auburn, GA 30011.

City of Winder

Maps are available for inspection at Inspections Department, 23 North Jackson Street, Winder, GA 30680.

Unincorporated Areas of Barrow County

Maps are available for inspection at Annex Building, 223 East Broad Street, Winder, GA 30680.

Franklin County, Illinois, and Incorporated Areas

Big Ditch Tributary	From approximately 2,630 feet upstream of the confluence with Middle Fork Big Muddy River.	None	+382	Unincorporated Areas of Franklin County, City of West Frankfort.
	To approximately 790 feet downstream of County Highway 37/Logan Street.	None	+388	
Ewing Creek	From approximately 5,000 feet upstream of the confluence with Middle Fork Big Muddy River.	None	+385	Unincorporated Areas of Franklin County, City of West Frankfort.
	To approximately 2,500 feet upstream of County Highway 5/Deering Road.	None	+393	
Pond Creek	From Interstate 57	None	+394	Unincorporated Areas of Franklin County, City of West Frankfort.
	To approximately 2,250 feet upstream of Old Johnston City Road.	None	+398	
Rend Lake	From the Rend Lake Dam	None	+415	Unincorporated Areas of Franklin County.
	To approximately 5,650 feet west of the intersection of North County Line Road and Conservation Lane.	None	+415	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of West Frankfort

Maps are available for inspection at West Frankfort City Hall, 110 N. Jefferson Street, West Frankfort, IL 62896.

Unincorporated Areas of Franklin County

Maps are available for inspection at Franklin County Highway Department, 13034 Oddfellow Lane, Benton, IL 62812.

Lyon County, Kentucky, and Incorporated Areas

Cumberland River (Lake Barkley).	At Barkley Dam	None	+375	Unincorporated Areas of Lyon County.
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Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tennessee River (Kentucky Lake).	At confluence with Hurricane Creek (Southern county boundary).	None	+375	Unincorporated Areas of Lyon County.
	Approximately 500 feet downstream Barkley Canal	None	+375	
	Approximately 3200 feet upstream Duncan Creek	None	+375	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Lyon County

Maps are available for inspection at 500A W. Dale Ave., Eddyville, KY 42038.

Menifee County, Kentucky, and Incorporated Areas

Licking River (Cave Run Lake).	At confluence with Buck Creek	None	+765	City of Frenchburg.
	At confluence with North Fork Licking River	None	+765	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Frenchburg

Maps are available for inspection at 157 Old Campus Road, Frenchburg, KY 40322.

Curry County, New Mexico, and Incorporated Areas

Northeast Drain	Approximately 645 feet upstream from Schepps Blvd	+4222	+4225	City of Clovis.
	Approximately from the intersection of Merlene Blvd ..	+4234	+4236	
Northeast Drain	Approximately 5,276 feet downstream from Humphry Road.	None	+4216	Unincorporated Areas of Curry County.
	At the confluence of West Second Street Drain	None	+4217	
Thomas Ditch 1	At the intersection of Brady Avenue	None	+4262	Unincorporated Areas of Curry County.
	At the intersection of the Burlington Northern Santa Fe Railroad.	None	+4280	
West Second Street Drain	At the confluence of Northeast Drain	None	+4217	Unincorporated Areas of Curry County.
	Approximately 268 feet upstream from Norris Road ...	None	+4232	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Clovis

Maps are available for inspection at 321 Connelly, Clovis, NM 88101.

Unincorporated Areas of Curry County

Maps are available for inspection at 321 Connelly, Clovis, NM 88102.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Dona Ana County, New Mexico, and Incorporated Areas				
Baylor Canyon Arroyo	At the upstream face of U.S. Highway 70 Bridge	None	+4604	Unincorporated Areas of Dona Ana County.
	Approximately 3,375 feet upstream of confluence with Baylor Canyon Arroyo Tributary 1.	None	+4797	
Baylor Canyon Arroyo Tributary 1.	At confluence with Baylor Canyon Arroyo	None	+4713	Unincorporated Areas of Dona Ana County.
	Approximately 3,800 feet above confluence with Baylor Canyon Arroyo.	None	+4823	
Baylor Canyon Arroyo Tributary 2.	At confluence with Baylor Canyon Arroyo	None	+4668	Unincorporated Areas of Dona Ana County.
	Approximately 6,850 feet upstream of confluence with Baylor Canyon Arroyo.	None	+4806	
Flow Path 1	At upstream face of Sand Hill Dam (Chandler Tank) ..	None	+4317	City of Las Cruces.
	At intersection of Main St. and Sand Hill Arroyo (Flowpath 1).	None	+4462	
Flow Path 12	At Interstate 10 Southbound frontage road (Las Alturas).	+3965	+3966	Unincorporated Areas of Dona Ana County, City of Las Cruces.
	Approximately 7,470 feet upstream of Tellbrook Road	None	+4189	
Flow Path 3	Approximately 4932 feet downstream from the confluence of North Tributary 2 and Flow Path 3.	+4186	+4188	City of Las Cruces.
	Approximately 200 feet downstream from the Alameda Dam.	None	+4252	
North Branch Gardner Arroyo	Approximately 675 feet upstream of intersection of McNutt Road and Alvarez Road.	None	+3781	Unincorporated Areas of Dona Ana County.
	Approximately 3,875 feet upstream of intersection of McNutt Road and Alvarez Road.	None	+3835	
North Vado Arroyo	At confluence with Unnamed Drainage	None	+3826	Unincorporated Areas of Dona Ana County.
	At downstream face of Interstate 10 Bridge	None	+3900	
South Branch of Gardner Arroyo.	Approximately 580 feet upstream of McNutt Road and Alvarez Road.	None	+3784	Unincorporated Areas of Dona Ana County.
	Approximately 5,190 feet upstream of intersection of McNutt Road and Alvarez Road.	None	+3831	
South Vado Arroyo	At confluence with Unnamed Drainage	None	+3822	Unincorporated Areas of Dona Ana County.
	At downstream face of Interstate 10 Bridge	None	+3871	
Stream Bilbo	At Bilbo Pond Spillway at Mesilla Hills Road	None	+3895	Unincorporated Areas of Dona Ana County, Town of Mesilla.
	At Lake Maureen Spillway	None	+4144	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Las Cruces

Maps are available for inspection at 200 North Church St., Las Cruces, NM 88001.

Town of Mesilla

Maps are available for inspection at Calle de Parian, P.O. Box 10, Mesilla, NM 88046.

Unincorporated Areas of Dona Ana County

Maps are available for inspection at 251 West Amador, Room 100B, Las Cruces, NM 88001.

Carter County, Oklahoma, and Incorporated Areas

Hickory Creek	Approximately 3528 feet downstream of the confluence of Hickory Creek Tributary A and Hickory Creek.	None	+792	Unincorporated Areas of Carter County.
	Approximately at the crosspoint of Breezewood Road and Hickory Creek.	None	+795	
Sand Creek Tributary B	Approximately 3045 feet downstream from the Carter 1 Dam.	None	+791	Unincorporated Areas of Carter County.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Wolf Creek	Approximately at the intersection of Sand Creek Tributary B and Refinery Road. Approximately 3410 feet upstream from the Carter 1 Dam.	None	+826	Unincorporated Areas of Carter County.
	Approximately 3315 feet upstream from the confluence of Wolf Creek and Cottonwood Creek.	None	+830	
	Approximately 1045 feet from the confluence of Wolf Creek Tributary 2 and Wolf Creek.	None	+852	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Carter County

Maps are available for inspection at 20 B Street, SW., #102, Ardmore, OK 73401.

Muskogee County, Oklahoma, and Incorporated Areas

Arkansas River	Approximately 1371 feet downstream of State Highway 104.	None	+553	Muskogee County.
	Approximately 1625 feet upstream of State Highway 104.	None	+554	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Muskogee County

Maps are available for inspection at Muskogee County Courthouse, 4517 Dennison Street, Muskogee, OK 74402.

Waupaca County, Wisconsin, and Incorporated Areas

Little Wolf River/Big Falls Pond.	0.33 mile downstream of bridge at County Highway G	+880	+879	Village of Big Falls, Unincorporated Areas of Waupaca County.
	1.1 miles upstream of bridge at County Highway G	+909	+910	
Waupaca River/Weyauwega Lake	2.65 miles upstream of confluence with Wolf River	+757	+756	City of Waupaca, City of Weyauwega, Unincorporated Areas of Waupaca County
	390 feet upstream of bridge at Anderson Road	None	+893	
Wolf River	Southern Waupaca County boundary	None	+753	Village of Fremont, Unincorporated Areas of Waupaca County.
	3.58 miles downstream of bridge at County Highway X.	+757	+756	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Waupaca

Maps are available for inspection at 111 South Main Street, Waupaca, WI 54981.

City of Weyauwega

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Maps are available for inspection at 109 East Main Street, Weyauwega, WI 54983.

Unincorporated Areas of Waupaca County

Maps are available for inspection at 811 Harding Street, Waupaca, WI 54981.

Village of Big Falls

Maps are available for inspection at 220 Main Street, Big Falls, WI 54926.

Village of Fremont

Maps are available for inspection at 317 Wolf River Drive, Fremont, WI 54940.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: November 14, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8-27811 Filed 11-21-08; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. FTA-2008-0057]

RIN 2132-AA99

Buy America Requirements; Bi-Metallic Composite Conducting Rail

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Following the two recent Buy America rulemakings pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the Federal Transit Administration (FTA) received a petition for reconsideration of the treatment of bi-metallic composite conducting rail as a steel product that must be manufactured in the United States.

At present, FTA's Buy America regulation treats both running rail and contact rail as a steel or iron product which must be manufactured entirely in the United States. During the recent rulemakings, several commenters proposed that bi-metallic rail be instead categorized as "traction power equipment." If adopted, the proposal would have changed the regulatory treatment of contact rail based on the rail's composition. As traction power equipment, bi-metallic rail would have been subject to a lower 60 percent

domestic content requirement, in contrast to running rail made of steel and iron, which must contain 100 percent domestic content. In addition, as traction power equipment, bi-metallic rail would be subject only to "final assembly" in the United States, which may be a less rigorous process than the manufacturing process required for other forms of power rail, including steel and iron.

Because FTA believed adopting the proposal in the Final Rule would have altered the regulatory environment for affected parties who may have been unaware of the proposal, including manufacturers of steel and iron contact rail, without subjecting the issue to full notice-and-comment from all affected parties, FTA declined to adopt the proposal, instead deferring action to this separate rulemaking.

Through this Notice of Proposed Rulemaking (NRPM), FTA proposes to amend its Buy America regulations to re-categorize bi-metallic composite conducting rail as "traction power equipment" which need only consist of 60 percent domestic content, with final assembly taking place in the United States.

DATES: Comments must be submitted on or before January 23, 2009. Late filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FTA-2008-0057] by any of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251.

See **SUPPLEMENTARY INFORMATION** section for more information on submitting comments.

FOR FURTHER INFORMATION CONTACT:

Richard Wong, Office of the Chief Counsel, Federal Transit Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366-4011 or Richard.Wong@dot.gov.

SUPPLEMENTARY INFORMATION:

Instructions for submitting comments:

You must include the agency name (Federal Transit Administration) and Docket number (FTA-2008-0057) or the Regulatory Identification Number (RIN) for this rulemaking at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted, without change, to <http://www.regulations.gov> including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://DocketsInfo.dot.gov>.

I. Background

On November 28, 2005, the Federal Transit Administration (FTA) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (70 FR 71246) that discussed several proposals mandated by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, August 10, 2005), and proposed to provide further clarification of existing FTA decisions on Buy America.

During the open comment period, several commenters recommended that aluminum composite conducting rail, otherwise known as Bimetallic Power Transmission (BPTS) equipment, which