

number of small entities because SIP approvals under section 110 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of 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. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, the EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this proposed action. Today’s action does not require the public to perform activities conducive to the use of VCS.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 12, 2000.

Francis X. Lyons,
Regional Administrator, Region 5.

Dated: January 7, 2000.

A. Stanley Meiburg,
Acting Regional Administrator, Region 4.
[FR Doc. 00–1555 Filed 1–21–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6526–8]

RIN 2060–A177

National Emission Standards for Hazardous Air Pollutants: Aerospace Manufacturing and Rework Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: This action proposes to amend the national emission standards for hazardous air pollutants (NESHAP) for Aerospace Manufacturing and Rework Facilities to include a separate emission standard for exterior primers used for large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at existing facilities that produce

fully assembled large commercial aircraft. We are proposing these amendments based on review of data that support significant technical concerns of an aircraft manufacturer’s ability to achieve the current 350 grams per liter (g/L) (2.9 pounds per gallon (lb/gal)) hazardous air pollutant (HAP) and volatile organic compound (VOC) content limit requirements when using exterior primers.

DATES: *Comments:* Written comments must be received by February 23, 2000, unless a hearing is requested by February 3, 2000. If a hearing is requested, written comments must be received by March 9, 2000.

ADDRESSES: *Comments:* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–20, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below in **FOR FURTHER INFORMATION CONTACT**. Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION**.

Public Hearing: Anyone requesting a public hearing must contact the EPA by February 3, 2000. If requested, a public hearing will be held February 7, 2000. If a public hearing is requested, the comment period will end 30 days after the date of the public hearing, in which case EPA will publish a document in the **Federal Register** announcing the hearing information and the extended comment period. If a public hearing is held, it will be held at the EPA’s Office of Administration Auditorium. Persons interested in attending the hearing to present oral testimony should contact Ms. Dorothy Apple, Policy, Planning, and Standards Group (MD-13); U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–4487.

Docket: Docket number A–92–20, containing information relevant to this proposed rulemaking, is available for public inspection between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460, telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Szykman or Mr. Jaime Pagan; Policy, Planning, and Standards Group, Emission Standards Division (MD-13); U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-2452 (Szykman) or (919) 541-5340 (Pagan), electronic mail address szykman.jim@epa.gov or pagan.jaime@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Facilities which are major sources of hazardous air pollutants and manufacture large commercial aircraft.

This table is not intended to be exhaustive but, rather, provides a guide for readers likely to be interested in the proposed amendments to the regulations affected by this action. If you have any questions regarding the applicability of these proposed amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Access and Filing Addresses

These proposed amendments, the promulgated NESHAP (40 CFR part 63, subpart GG), and other background information are available in Docket Number A-92-20 or by request from the EPA's Air and Radiation Docket and Information Center (**ADDRESSES**). These documents can also be accessed through the EPA web site at: <http://www.epa.gov/ttn/oarpg>. For further information and general questions regarding the Technology Transfer Network (TTN) call Mr. Hersch Rorex (919) 541-5637. Electronic comments and data may be submitted by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in Word Perfect 5.1, 6.1, Corel 8, or ACSII file format. Identify all comments and data in electronic form by the docket number A-92-20. No Confidential Business Information (CBI) should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

Outline. The information presented in this preamble is organized as follows:

I. Why are we taking this action?

- II. What provisions of the Aerospace NESHAP would these proposed amendments affect?
- III. Whom would these proposed amendments affect?
- IV. What are the administrative requirements for this proposal?
 - A. Executive Order 12866, Regulatory Planning and Review
 - B. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - C. Paperwork Reduction Act
 - D. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
 - E. Unfunded Mandates Reform Act
 - F. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments
 - G. National Technology Transfer and Advancement Act
 - H. Executive Order 13132: Federalism

I. Why Are We Taking This Action?

On September 1, 1995, we promulgated the NESHAP for Aerospace Manufacturing and Rework Facilities (60 FR 45948). The NESHAP contains standards to control organic HAP and VOC emissions from primer application operations. These standards require the use of a primer with an organic HAP and VOC content level of 350 g/L (2.9 lb/gal) or less (40 CFR 63.745(c)(1),(2)) where no add-on control system is used, or the use of a control system to reduce the organic HAP and VOC emissions to the atmosphere by 81 percent or greater (§ 63.745(d)). We set these standards at the maximum achievable control technology (MACT) floor for new and existing sources.

In the preamble to the proposed NESHAP (59 FR 29241), we explained the basis of the MACT floor for primer application operations. We established the MACT floor for existing facilities based on the weighted average VOC content that represented the average of the top 12 percent of facilities. Because of the limited available data on the corresponding organic HAP content, we proposed a HAP content limit at the same level as the VOC content limit. Also, in applying these standards within the source category, we did not identify any technical reason to distinguish between the different types of market segments (commercial or military), or the work type (original equipment manufacture or rework). Therefore, we applied these standards to all market segments within the source category.

In public comments received on the proposed rule, aircraft manufacturers raised concerns about the inclusion of exterior primers for large commercial aircraft in the data set for the MACT floor on primer operations. The industry

expressed concerns about whether a suitable exterior primer would be available by the September 1, 1998 NESHAP compliance deadline for existing sources. However, at that time, industry did not provide adequate supporting data to justify separate treatment of exterior primers for large commercial aircraft.

Recently, an aircraft manufacturer raised these same concerns and submitted additional data indicating that it has not been able to find a satisfactory exterior primer for use in manufacturing and assembling large commercial aircraft that will meet the current HAP and VOC content limits in the NESHAP and their own performance needs. This aircraft manufacturer has stated that several factors exist that create a distinction between facilities that produce fully assembled large commercial aircraft and facilities that manufacture other types of aerospace components and vehicles. One of the primary differences is the annual utilization rates for large commercial aircraft versus other aircraft. Large commercial aircraft often remain in constant use with multiple take-offs and landings daily and much higher annual flight hours than other aircraft. The total flight time, flight frequency, and flight altitudes for large commercial aircraft are often much higher than for other types of aircraft, such as defense aircraft and general aviation aircraft. These higher utilization rates associated with large commercial aircraft create distinct stresses for the paint systems used. In addition, the largest of the commercial aircraft are often designed for overseas travel (transcontinental routes) which creates a greater exposure to salt, a strong corrosive agent. Finally, this aircraft manufacturer has stated that differing paint requirements, such as replicability of color and gloss, and differing maintenance requirements due to its large number of customers (200 plus), are also factors that can contribute to the acceptability of a paint system. This aircraft manufacturer expressed significant technical concern about its ability to find an exterior primer that would provide adequate protection to large commercial aircraft without pitting or peeling and that would meet the VOC and HAP content standards for primers. This aircraft manufacturer has stated that available low-VOC exterior primers have very different physical and chemical properties, such as the rheology and cross-link density of the coating, from the primers that were in use when the MACT floor was established in 1995. Primers that were in use at that time contained 1,1,1

trichloroethane (TCA) but TCA has since been phased out due to its adverse effect on the stratospheric ozone layer. New TCA-free, high solids/low-VOC primers represent a distinct technology from the previous TCA primer technology. The manufacturer has stated that this has resulted in changes to the performance characteristics of the primer, particularly the adhesion, flexibility, and impact resistance, which have resulted in a greater chance of the coatings peeling and pitting. This aircraft manufacturer provided summary test data on the 50 exterior primers tested since the Aerospace NESHAP was promulgated.

The compliance date for the NESHAP was September 1, 1998. We have granted compliance extensions based on this issue; however, these extensions expired September 1, 1999.

Today, we are proposing to amend the current emission limits contained in 40 CFR 63.745(c)(1) and (2) for primer operations with no add-on control systems by proposing a separate emission limit of 650 g/L (5.4 lb/gal) or less of organic HAP and VOC for exterior primers as applied to large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at existing affected sources that produce fully assembled large commercial aircraft; and an emission limit of 350 g/L (2.9 lb/gal) or less of organic HAP and VOC for exterior primers as applied to large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at new affected sources that produce fully assembled large commercial aircraft. Our bases for these amendments are data recently submitted to us by a manufacturer of large commercial aircraft and a reevaluation of the original data used to establish the MACT floor for primer application operations. Also based on the fact that TCA-based primer is no longer available, as previously discussed, we reevaluated the original data used to establish the MACT floor for primer application operations of 350 g/L (2.9 lb/gal) or less of organic HAP and VOC.

In order to determine if a separate limit should be established for exterior primers used on large commercial aircraft at existing facilities that produce fully assembled large commercial aircraft, we considered whether these facilities are distinct from other segments of the industry. Because large commercial aircraft often have much higher annual utilization rates and greater exposure to corrosive environments, creating the need for higher performance coating systems,

and the manufacturer of such aircraft has many different customer specifications it must satisfy, we determined that a separate limit should be established for these facilities. We then re-evaluated the original data only for facilities that manufactured fully assembled large commercial aircraft. In our re-evaluation of the data, we identified four facilities which manufactured fully assembled large commercial aircraft. To account for the fact that TCA-based primer is no longer available, we removed all TCA-based primer data. The data from these four facilities on the annual usage of primers used in the primer operations for large commercial aircraft had a VOC content that ranged from 650 g/L (5.3 lb/gal) to 670 g/L (5.6 lb/gal). A more detailed discussion of this analysis can be found in the Docket (No. A-92-20) within the document titled, "MACT Floor for Aerospace Commercial Aircraft Original Equipment Operations—Interior and Exterior Primers."

The Clean Air Act requires that emission standards for HAP established under section 112(d)(2) be based on " * * * the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standards applies * * *." This basis is commonly referred to as MACT.

Section 112(d)(3) further clarifies the minimum acceptable stringency for the MACT level of emission reduction. For new sources, MACT shall be no " * * * less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator." For existing sources, MACT " * * * shall not be less stringent, and may be more stringent than—

(A) the average emission limitation achieved by the best performing 12 percent of the existing sources * * * in the category or subcategory for categories and subcategories with 30 or more sources, or

(B) the average emission limitation achieved by the best performing five sources * * * in the category or subcategory for categories or subcategories with fewer than 30 sources."

In prior rulemaking where fewer than five sources exist, we have based the MACT floor for existing sources on the average emission limitation achieved by

all the sources. Use of the arithmetic average would result in a VOC content of 655 g/L. This method for calculating the MACT floor yields a number that does not correspond to an actual VOC content of primer used at these facilities. Therefore, we determined the MACT floor for these four facilities based on the median VOC content for primer operations at these facilities. The MACT floor for primer operations at these facilities is 650 g/L (5.4 lb/gal) or less of organic HAP and VOC. This represents the existing source MACT floor for all primer operations at facilities that manufacture fully assembled large commercial aircraft.

We then considered exterior versus interior primers. The data recently submitted to us by the aircraft manufacturer relate only to technical problems concerning the use of "exterior" primers at existing facilities that manufacture fully assembled large commercial aircraft. We do not have any data indicating that similar problems exist with the use of interior primers at these facilities. We believe that the 350 g/L (2.9 lb/gal) level has already been demonstrated to be an achievable level of control for interior primers used at facilities that manufacture fully assembled large commercial aircraft. Therefore, we propose to go beyond the MACT floor level of control (650 g/L (2.9 lb/gal) or less of organic HAP and VOC to 350 g/L (2.9 lb/gal) or less of organic HAP and VOC for interior primer operations used at existing and new facilities that manufacture fully assembled large commercial aircraft.

We are not proposing to establish MACT at a level beyond the MACT floor for exterior primers used on large commercial aircraft at facilities that produce fully assembled large commercial aircraft. This is because we believe that meeting a standard more stringent than a 650 g/L level is not technically achievable for all existing commercial production facilities that manufacture and assemble large commercial aircraft at this time. However, the manufacturer in question has stated that it will continue to test and evaluate exterior primers, used to manufacture and assemble large commercial aircraft, with the goal of achieving the current content limit of 350 g/L. Should this manufacturer find an exterior primer that meets its specifications and is lower than the proposed content limit of 650 g/L prior to promulgation of these proposed amendments, we intend to promulgate an emission limit for exterior primers used on large commercial aircraft at facilities that manufacture fully

assembled large commercial aircraft that would be at this lower level.

For new sources, section 112(d)(3) states that MACT “* * * shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator.”

Based on our reevaluation of these original data, the new source MACT floor for primer operations used on large commercial aircraft at facilities that produce fully assembled large commercial aircraft is 650 g/L (5.4 lb/gal) or less of organic HAP and VOC. This represents the “best controlled similar source” from these four facilities. Since the original data were collected, new high-solids chemistry, without TCA, has been employed to achieve the 350 g/L levels. Some existing sources may not be able to use this new technology, combined with other changes to low-HAP and low-VOC topcoats and new application techniques, because of design constraints in their overall operation. The use of this technology may only be feasible for facilities with maximum flexibility in physical plant, climate control, contaminant control (keeping the surface clean prior to primer application), etc. However, for a new source that manufactures fully assembled large commercial aircraft, the operation as a whole could be designed to accommodate the new high-solids technology. Indeed, at least one large commercial aircraft facility is currently using this technology (Boeing Long Beach facility, formerly the McDonnell Douglas facility). This is new information that is not in the original data set used to determine the MACT floor.

Based on the recent data provided, EPA concludes that although technological problems exist at the 350 g/L level for most of the existing facilities, manufacturers can design new facilities with this new technology in mind. Thus, we believe that it is appropriate to set MACT above the floor for new facilities. As a result, we propose to set the limit for exterior primer used on large commercial aircraft at new facilities that produce fully assembled large commercial aircraft at 350 g/L (2.9 lb/gal) or less of organic HAP and VOC.

Although we are not addressing other sectors of the industry, such as the military, in today's proposal, we reviewed the data from the remainder of the responses to section 114 questionnaires for these sectors of the aerospace manufacturing and rework industry that perform primer operations. Our preliminary analysis indicates that

the MACT floor for these sectors of the industry would also be in the range of 650 g/L, assuming that we removed the TCA-based data from the data set. However, even if the floor for these sectors were to change, we would see no reason not to adopt the current 350 g/L limit as an above-the-floor requirement. We have received no information indicating that this limit is not achievable for these sectors of the industry. In addition, on September 1, 1998, we issued amendments to the Aerospace NESHAP (63 FR 46533) that set new standards for the control of organic HAP and VOC emissions from primer and topcoat application operations for general aviation rework facilities. We believe that those standards resolved any similar problems for the general aviation rework facilities. Therefore, the proposed organic HAP and VOC emission limit of 650 g/L (5.4 lb/gal) or less for exterior primers applies only to large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at existing affected sources that produce fully assembled large commercial aircraft.

In deciding how to define “large commercial aircraft,” we evaluated several different criteria. A review of current Federal Aviation Agency (FAA) regulations revealed two definitions of large aircraft in the Code of Federal Regulations, Title 14 (-) Aeronautics and Space. Under title 14, part 1, general definitions are provided which are applicable for the majority of FAA regulations, sub-chapters A through K. Part 1.1 of title 14 defines large aircraft as “an aircraft of more than 12,500 pounds, maximum certified take-off weight.” Under 14 CFR 268.1, which is a regulation applicable to air carriers known as air taxi operators and commuter air carrier operations, large aircraft is defined as “any aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.” These definitions suggest the use of maximum certified take-off weight, maximum payload capacity, or maximum passenger capacity as possible criteria to define large aircraft. However, factors cited in the data submitted by the aircraft manufacturer indicated that total flight time, flight frequency and flight altitudes were distinguishing criteria which create more demanding performance characteristics for exterior primers used to manufacture and assemble large commercial aircraft. This suggests that one or all of these criteria could serve as another possible

alternative for defining large commercial aircraft.

Based on our review of the data, we believe that the weight of the aircraft is the best defining factor. Greater weight frequently is related to aircraft that are designed to have greater flight time, flight frequency and flight altitude. After reviewing the FAA definitions of large aircraft, we believe that maximum take-off weight would be an appropriate criterion to define large commercial aircraft. The maximum take-off weight is well known and documented within the industry. However, based on the data received, the current definition within FAA regulations (a maximum take-off weight of 12,500 lbs) does not characterize the size of the aircraft where we believe the problems exist for exterior primers.

With respect to the second part of this definition, “commercial,” this manufacturer has not indicated that this is a problem for the large military aircraft it manufactures. Therefore, we are defining the term commercial to exclude large aircraft manufactured for military use.

We are proposing to define a large commercial aircraft as an aircraft of more than 110,000 pounds, maximum certified take-off weight manufactured for non-military use. We are requesting comments on this definition along with the use of the other criteria discussed for defining large commercial aircraft.

II. What Provisions of the Aerospace NESHAP Would These Proposed Amendments Affect?

We are proposing to amend section 63.745(c)(1) and (2) of the NESHAP by adding a separate HAP and VOC content limit of 650 g/L for exterior primers applied to large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at existing affected sources that produce fully assembled large commercial aircraft.

III. Whom Would These Proposed Amendments Affect?

These proposed amendments would affect you if you are the owner or operator of an existing or new exterior primer application operation at a facility that, either in part or in whole, manufactures and assembles large commercial aircraft and is a major source as defined in 40 CFR 63.2.

IV. What Are the Administrative Requirements for This Proposal?

A. Executive Order 12866, Regulator Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must

determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards 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 entitlement, 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.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that is determined to be "economically significant" as defined under Executive Order 12866, and concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This proposal is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

C. Paperwork Reduction Act

These proposed amendments would not impose any new information collection requirements would result in no change to the currently approved

collection. The OMB has approved the information collection requirements contained in the Aerospace Manufacturing and Rework Facilities NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2060-0314.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, small entity is defined as: (1) A small business that has less than 1,500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. These proposed amendments will not impose any requirements on small entities. They affect only manufacturers of large commercial aircraft. There are no small-entity manufacturers of large commercial aircraft.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules

with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed amendments contain no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. These proposed amendments would amend certain existing emission limits in a deregulatory manner and would not impose any new enforceable duty on any State, local or tribal governments or the private sector. Thus, today's proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's proposed amendments are not subject to the requirements of section 203 of the UMRA.

F. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance

costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed amendments do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these proposed amendments.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, and business practices) that are developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

These proposed action amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

H. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have

federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

These proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These proposed amendments would amend portions of an existing rule, the Aerospace NESHAP, in a de-regulatory manner. They would not impose any obligations on State or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 11, 2000.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities

2. Section 63.742 is amended by adding in alphabetical order definitions for "Exterior primer" and "Large commercial aircraft" to read as follows:

§ 63.742 Definitions.

* * * * *

Exterior primer means the first layer and any subsequent layers of identically formulated coating applied to the exterior surface of an aerospace vehicle or component where the component is used on the exterior of the aerospace vehicle. Exterior primers are typically used for corrosion prevention, protection from the environment, functional fluid resistance, and adhesion of subsequent exterior topcoats. Coatings that are defined as specialty coatings are not included under this definition.

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Large commercial aircraft means an aircraft of more than 110,000 pounds, maximum certified take-off weight manufactured for non-military use.

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3. Section 63.745 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 63.745 Standards: Primer and topcoat application operations.

* * * * *

(c) * * *

(1) Organic HAP emissions from primers shall be limited to an organic HAP content level of no more than: 540 g/L (4.5 lb/gal) of primer (less water), as applied, for general aviation rework facilities, or 650 g/L (5.4 lb/gal) of exterior primer (less water), as applied, to large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at existing affected sources that produce fully assembled large commercial aircraft, or 350 g/L (2.9 lb/gal) of primer (less water), as applied.

(2) VOC emissions from primers shall be limited to a VOC content level of no more than: 540 g/L (4.5 lb/gal) of primer (less water and exempt solvents), as applied, for general aviation rework facilities, or 650 g/L (5.4 lb/gal) of exterior primer (less water and exempt solvents), as applied, to large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at existing affected sources that produce fully assembled large commercial aircraft, or 350 g/L (2.9

lb/gal) of primer (less water and exempt solvents), as applied.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period for the Columbian Sharp-Tailed Grouse Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Status review; notice of reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of the reopening of the comment period for the Columbian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*) status review. The comment period is reopened to accommodate requests by various federal and state wildlife resource agencies for additional time to provide input. Reopening of the comment period will also allow further opportunity for all interested parties to submit additional information and written comments to be considered by the Service for this status review (see **DATES** and **ADDRESSES**).

DATES: Written materials from all interested parties must be received by March 27, 2000.

ADDRESSES: Written comments, data, reports, map products, and other information concerning this status review should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Upper Columbia River Basin Field Office, 11103 East Montgomery Drive, Spokane, Washington 99206.

FOR FURTHER INFORMATION CONTACT: Chris Warren, at the address listed above (telephone 509/891-6839; facsimile 509/891-6748).

SUPPLEMENTARY INFORMATION:

Background

The Columbian sharp-tailed grouse is one of six recognized subspecies of sharp-tailed grouse that occur in North America (AOU 1957). Compared to the other subspecies, Columbian sharp-tailed grouse are described as slightly smaller with darker gray plumage. Historically, Columbian sharp-tailed

grouse range extended westward from the continental divide in Montana, Idaho, Wyoming, and Colorado to northeastern California and eastern Oregon and Washington; southward to northern Nevada and central Utah; and northward through central British Columbia.

Columbian sharp-tailed grouse rely on a variety of native habitats within the sagebrush-bunchgrass, meadow-steppe, mountain shrub, and riparian zones of the northwestern United States (Giesen and Connelly 1993). Various upland habitats, with a component of more dense riparian or mountain shrub habitat to provide escape cover, are important to the subspecies from spring to fall. The availability of suitable wintering habitat, containing a dominant component of deciduous trees and shrubs, is also thought to be a key element to healthy Columbian sharp-tailed grouse populations (Marks and Marks 1987, Giesen and Connelly 1993).

In 1979, the range wide population estimate for the Columbian sharp-tailed grouse was approximately 60,000 to 170,000 individuals, with roughly 60 to 80 percent occurring in British Columbia (Miller and Graul 1980). Miller and Graul (1980) also estimated that the subspecies occupied less than 10 percent of its historic range in Idaho, Montana, Utah, and Wyoming, 10 to 50 percent in Colorado and Washington, and 80 percent or more in British Columbia. The current minimum to maximum range wide population estimate for the Columbian sharp-tailed grouse is approximately 30,000 to 70,000 individuals, with roughly 60 to 70 percent occurring in southeastern Idaho. The Columbian sharp-tailed grouse has been extirpated from California (*circa* 1920), Nevada (*circa* 1950), and Oregon (*circa* 1960) (Miller and Graul 1980).

Declines in the overall abundance of Columbian sharp-tailed grouse and the extent of its occupied range have acted to isolate various populations of the subspecies. Three relatively large populations of Columbian sharp-tailed grouse still exist; one in northwestern Colorado to south-central Wyoming, one in southeastern Idaho to northern Utah, and one in central British Columbia. To varying degrees, the remaining areas occupied by the subspecies are made up of relatively small and isolated local populations.

Much of the historic area used by Columbian sharp-tailed grouse has been converted for crop production and affected by other influences including rural and suburban development, dam construction, minerals exploitation, chaining, herbicide spraying, and fire

(Miller and Graul 1980, Wood 1991, Giesen and Connelly 1993). In addition, grazing practices over large portions of Columbian sharp-tailed grouse range may negatively impact native habitats (Hart *et al.* 1950, Miller and Graul 1980, Kessler and Bosch 1982, Giesen and Connelly 1993). Intensive grazing pressure may be especially detrimental to nesting and wintering habitats used by Columbian sharp-tailed grouse populations, primarily due to impacts on their cover and food resources.

Much of the area currently and potentially occupied by Columbian sharp-tailed grouse is in private ownership. Presently, large portions of these privately owned lands are withdrawn from crop production and planted to native and non-native cover under the Federal Conservation Reserve Program (CRP) (USDA 1998). CRP lands have become very important to Columbian sharp-tailed grouse in Colorado, Idaho, Oregon, Utah, and Washington. A number of CRP contracts are scheduled to expire from 1999 through the year 2002. The potential net changes that may occur under the CRP vary considerably by the counties and states occupied by Columbian sharp-tailed grouse. Presently, it is unclear what affects these potential changes may have on the subspecies' populations.

Currently, Columbian sharp-tailed grouse are hunted in Colorado, Idaho, and British Columbia. Hunting is not likely to have an additive affect over natural mortality for relatively large, stable populations of upland birds under managed conditions (Braun *et al.* 1994). However, depending on the status of the hunted population and hunter access patterns, some areas may act as population "sinks" and be adversely impacted by additional mortality. Incidental or illegal take of the subspecies may also occur, especially in areas hunted extensively for other upland game (Hart *et al.* 1950, Miller and Graul 1980).

Reintroduction efforts for Columbian sharp-tailed grouse have taken place in Washington, Montana, Oregon, Nevada, and Idaho. Many early reintroduction efforts conducted for prairie grouse (including sharp-tailed grouse) failed to produce self-sustaining populations or to increase the size or distribution of augmented populations (Toepfer *et al.* 1990). However, several recent efforts have shown greater potential to be effective as the techniques for reintroductions have improved.

The Service published a notice in the **Federal Register** on October 26, 1999, announcing that a range wide status review for the Columbian sharp-tailed