

§ 1.170A-13T Substantiation requirement for certain contributions.

(a) *Certain goods or services that have insubstantial value not taken into account.* Goods or services that have insubstantial value under the guidelines provided in Revenue Procedures 90-12, 1990-1 C.B. 471, and 92-49, 1992-1 C.B. 987, (and any successor documents) need not be taken into account for purposes of section 170(f)(8). (See § 601.601(d)(2)(ii) of the Statement of Procedural Rules, 26 CFR part 601.)

(b) *Contributions made by payroll deduction—(1) Form of substantiation.* A contribution made by means of withholding from a taxpayer's wages and payment by the taxpayer's employer to a donee organization may be substantiated, for purposes of section 170(f)(8), by—

(i) A pay stub, Form W-2, or other document furnished by the employer that evidences the amount withheld by the employer for the purpose of payment to a donee organization, and

(ii) A pledge card or other document prepared by the donee organization that includes a statement that the organization does not provide goods or services in whole or partial consideration for any contributions made to the organization by payroll deduction.

(2) *Application of \$250 threshold.* For the purpose of applying the \$250 threshold provided in section 170(f)(8)(A) to contributions made by the means described in paragraph (b)(1) of this section, the amount withheld from each payment of wages to a taxpayer is treated as a separate contribution.

(c) *Distributing organizations as donees.* An organization described in section 170(c), or an organization described in 5 CFR 950.105 (a Principal Combined Fund Organization for purposes of the Combined Federal Campaign) and acting in that capacity, that receives a payment made as a contribution is treated as a donee organization solely for purposes of section 170(f)(8), even if the organization (pursuant to the donor's instructions or otherwise) distributes the amount received to one or more organizations described in section 170(c). This paragraph (c) does not apply, however, to a case in which the distributee organization provides goods or services as part of a transaction structured with a view to avoid taking the goods or services into account in determining the amount of the deduction to which the donor is entitled under section 170.

(d) *Effective date.* The rules of this section apply to contributions made on or after January 1, 1994.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for part 602 continues to read:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by adding the entry "1.170A-13T . . . 1545-1431" in numerical order to the table.

Approved: May 6, 1994.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94-12829 Filed 5-26-94; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 100**

[CGD 09-94-007]

RIN 2115-AA97

Special Local Regulation; Tallship Erie 94, Lake Erie, Presque Isle Bay, Erie, PA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: A special local regulation is being adopted for the marine event, Tallship Erie 94. This event will be held on Presque Isle Bay and Lake Erie, Erie, PA on July 8, 1994. The Tallship Erie 94 will have an estimated 15-20, 70-200 foot sailing ships, parading in a closed course on Lake Erie and will have an unusually large concentration of spectator vessels which could pose hazards to navigation in the area. This regulation is needed to provide for the safety of life, limb, and property on navigable waters during the event.

EFFECTIVE DATE: This regulation is effective at 3 p.m. (EDST) until 7 p.m. (EDST), July 8, 1994.

FOR FURTHER INFORMATION CONTACT:

William A. Thibodeau, Marine Science Technician Second Class, U.S. Coast Guard, Aids to Navigation & Waterways Management Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-3990.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking has not been published for this regulation and good

cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District until May 2, 1994, and there was not sufficient time remaining to a publish proposed rule in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation is Scott J. Smith, Lieutenant Junior Grade, U.S. Coast Guard, Project Officer, Aids to Navigation & Waterways Management Branch and Karen E. Lloyd, Lieutenant, U.S. Coast Guard, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The Tallship Erie 94 will be held on Presque Isle Bay and Lake Erie on July 8, 1994. This regulation restricts general navigation on Presque Isle Bay and Erie Harbor from the Perry's Landing to Erie Harbor Entrance Lighted Buoy 2 (LLNR 3520). This event will have an estimated 15-20, 70-200 foot sailing ships, parading in a closed course on Lake Erie and will have an usually large concentration of spectator vessels which could pose hazards to navigation in the area. This regulation is necessary to ensure the protection of life, limb, and property during this event. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Erie, PA).

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, they are categorically excluded from further environmental documentation.

Economic Assessment and Certification

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs

and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

This regulation will impose no collection information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulation

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35—T0907 is added to read as follows:

§ 100.35—T0907 *Tailship Erie 94, Presque Isle Bay, Lake Erie, Erie, PA.*

(a) *Regulated area.* That portion of Lake Erie, Presque Isle Bay Entrance Channel and Presque Isle Bay from:

Latitude	Longitude
42°10' N	080°03' W, thence to
42°08.1' N	080°07' W, thence to
42°07.9' N	080°06.8' W, thence
	east
Along the shoreline	
and structures to:	
42°09.2' N	080°02.6' W, thence
	to
42°10' N	080°03' W.

(b) *Special local regulation.* This Section restricts general navigation in the regulated area for the safety of spectators and participants.

(c) *Patrol commander.*

(1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander, (Officer in Charge, U.S. Coast Guard Station Erie, PA) The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander."

(2) The Patrol Commander may direct the anchoring, mooring, or movement of

any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb, or property.

(6) All persons in the area shall comply with the orders of the Coast Guard Patrol Commander.

(d) *Effective date.* This section will be effective from 3 p.m. (EDST) until 7 p.m. (EDST) on July 8, 1994, unless otherwise terminated by the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Erie, PA).

Dated: May 17, 1994.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Commander,
Ninth Coast Guard District.

[FR Doc. 94-13087 Filed 5-26-94; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

CGD01-94-030]

RIN 2115-AA97

Safety Zone; Narragansett Bay, Quonset Point, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on June 4 and 5, 1994, at Quonset Point, North Kingstown, RI, while aerial demonstrations are performed in preparation for and during the Rhode Island Air National Guard Open House. This action is necessary to protect spectator and pleasure craft, as well as other vessels in the vicinity, from the risks associated with low flying aircraft. **EFFECTIVE DATE:** This regulation is effective between 8:30 a.m. and 4 p.m. on June 4, 1994 and between 8:30 a.m. and 4 p.m. on June 5, 1994 unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT:
LTJG Timothy Pavilonis of Marine Safety Office Providence at (401) 435-2300.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation were Lieutenant (junior grade) T. Pavilonis, Project Manager for the Coast Guard Captain of the Port Providence, and Lieutenant Commander J. Stieb, Project Counsel for the First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective less than 30 days after Federal Register publication. Due to the date on which this application was received, there was insufficient notice to publish proposed rules in advance of the event. Publishing a NPRM and delaying the event would be contrary to the public interest. The air show is intended for public viewing and delaying the event would result in cancellation of the event due to the difficulty of rescheduling participants.

Background and Purpose

The purpose of this rulemaking is to protect spectators and pleasure craft, as well as other vessels, from potential hazards associated with low level flight demonstrations. The demonstrations will take place in the airspace over the Quonset State Airport, North Kingstown, RI, a portion of the Naval Construction Battalion Center in Davisville, RI, and a small area of Narragansett Bay adjacent to the Quonset State Airport.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The entities affected by this rulemaking effort are pleasure craft and fishing vessels. Large commercial vessel transits through the waters contained in

this safety zone are infrequent, approximately 3 per month. Commercial fishing vessels are able to conduct operations outside the Quonset Channel because they are not constrained by their draft. There are other areas available outside of the safety zone where normal fishing operations may be conducted. Therefore, restricting access to the area as proposed will not cause undue hardship to any entity.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons discussed in the Regulatory Evaluation, the Coast Guard expects the economic impact of this rule to be minimal and the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and had determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of these regulations and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, they are an action to protect public safety and are categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01-030 is added to read as follows:

§ 165.T01-030

Safety Zone: Narragansett Bay, Quonset Point, RI.

(a) *Location.* The following area is a safety zone: The area of Narragansett Bay enclosed in a line from the end of the Quonset Point Jetty (41°-35'-10"N, 071°-24'-29"W), extending southeast to Quonset Channel buoy #7 (41°-34'-54"N, 071°-23'-50.5"W), northeast to (41°-35'-07"N, 071°-23'-21"W), and northwest to the south corner of Pier #1, Davisville Depot (41°-36'-42"N, 071°-24'-17"W).

(b) *Effective date.* This section is effective from 8:30 a.m. to 4 p.m. on June 4, 1994, and from 8:30 a.m. to 4 p.m. on June 5, 1994, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: May 9, 1994.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 94-13088 Filed 5-26-94; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AB43

Subsistence Management Regulations for Federal Public Lands in Alaska, Subpart C—Board Determinations

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Federal Subsistence Board (Board) has amended that portion of the Subsistence Management Regulations for Federal Public Lands in Alaska, subpart C, which lists the areas

and communities, and residents thereof, determined to have customary and traditional use of moose and rainbow trout on public lands (57 FR 22957-22964). Specifically, Board decisions made on April 5, 1993 and August 10, 1993 have changed the customary and traditional use determinations for rainbow trout in the Kuskokwim Area and for moose in Unit 1(B).

EFFECTIVE DATES: April 5, 1993, for the customary and traditional use determination relevant to rainbow trout in the Kuskokwim Area, and, August 10, 1993, for the customary and traditional use determination relevant to moose in Unit 1(B).

FOR FURTHER INFORMATION CONTACT:

Chair, Federal Subsistence Board, c/o Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3447. For questions specific to National Forest System lands, contact Norman R. Howse, Assistant Director Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802-1628, telephone (907) 586-8890.

SUPPLEMENTARY INFORMATION:

Rainbow Trout

In 1992, the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiak, Akiachak, and Platinum requested that the Board reconsider a negative customary and traditional use determination for rainbow trout. These communities provided extensive testimony to the Board regarding their use of rainbow trout. In the summer and fall of 1992, staff from the Yukon Delta National Wildlife Refuge and the Togiak National Wildlife Refuge conducted interviews in 19 communities within the Yukon-Kuskokwim Delta to obtain additional information on customary and traditional uses of rainbow trout. Based on public testimony, more current survey data, and contemporary Alaska Department of Fish and Game subsistence use reports, a U.S. Fish and Wildlife Service report (FWS report) on the subsistence uses of rainbow trout was completed in April 1993, and entitled Customary and Traditional Use Eligibility Report: Rainbow Trout, Unit 18: Villages of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak. Applying the eight factors of customary and traditional use as specified at 36 CFR 242.16 and 50 CFR 100.16, this FWS report assessed the customary and traditional uses employed by residents of these seven communities. The FWS report, which the Board used as support for its

ultimate decision, found that the communities of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak substantially met the requirements of the eight characteristics which exemplify customary and traditional use of rainbow trout in the lower Kuskokwim River region. Therefore, the Board concluded that residents of those villages have customarily and traditionally used rainbow trout for subsistence purposes.

Moose, Unit 1(B)

Concern for the health of the moose population in the Stikine River drainage of southeast Alaska prompted the Board to take action in April 1993 to: (1) Limit subsistence uses of moose on public lands in the Stikine River drainage to those qualified rural residents with a positive customary and traditional use determination for moose within the Stikine River drainage, and (2) reduce pressure on that moose population by only authorizing subsistence harvest of bulls with a spike-fork, or 50-inch antler configuration (or three brow tines on either antler). Federal customary and traditional use determinations, which had been adopted in 1990 from State of Alaska regulations, only recognized residents of Wrangell as having customary and traditional use of the moose population found in the Stikine River drainage.

After that April 1993 decision, the Board received numerous letters from individuals and organizations who objected to the elimination of subsistence uses of moose by rural residents living outside of the Wrangell community. The Board reconsidered this issue in an August 10, 1993 public meeting at which public testimony was taken and additional information on customary and traditional uses of moose in the Stikine River drainage was reviewed. This additional information included a transcript of a 1987 Alaska Board of Game hearing which established the original customary and traditional use determination. The Board also examined information contained in State of Alaska and U.S. Forest Service studies on subsistence use patterns in southeast Alaska.

In consideration of presented evidence, the Board determined that the quantity and quality of the new information was substantially greater

than was available when the original customary and traditional use determination was made. The Board found compelling evidence that residents of Petersburg and perhaps other southeast Alaska communities have a long-term pattern of use of, and strong economic and sociocultural dependence on, moose in the Stikine River drainage. Accordingly, the Board amended the 1990 customary and traditional finding to that of an "interim no determination". An "interim no determination" finding does not diminish Wrangell's customary and traditional use status but allows all qualified rural residents to take moose in the Stikine River drainage pending completion of an ongoing Board review of customary and traditional wildlife uses by southeastern Alaska communities.

The Board finds these modifications to be exempt from Administrative Procedures Act (APA) requirements for public notice and public comments prior to publication. In this instance, the Board finds that such requirements are impracticable, unnecessary, and contrary to public interest. The subpart C modifications contained herein accurately reflect actions taken by the Board under full public review processes. Public notice and public comment opportunities on these issues were afforded through newspaper notices, public meetings, and mailings. Further notice and public comment on these modifications would impede the regulatory process, would provide insignificant benefits in nature and impact, would unnecessarily restrict certain subsistence opportunities, and would generally fail to serve overall public interest. Therefore, the Board has not reapplied notice and public comment procedures prior to publication of these changes.

The Board also finds good cause to implement this final rule on April 5, 1993 (for use of rainbow trout, Kuskokwim Area) and on August 10, 1993 (for use of moose in Unit 1(B)). These effective dates are consistent with former Board actions which were publicly deliberated and acted upon for this final rule modification. The Board therefore finds these modifications to be exempt from APA requirements for publication 30 days prior to the effective date.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public Lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public Lands, Reporting and recordkeeping requirements, Wildlife.

For reasons set forth in the preamble, 36 CFR 242 and 50 CFR part 100 are amended as follows:

36 CFR PART 242—[AMENDED]

50 CFR PART 100—[AMENDED]

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3566; 43 U.S.C. 1733.

2. In the table at § 24(a)(1), Wildlife determinations, revise the "Area", "Species", and "Determination" columns for "Moose" in the entry of "GMU 1(B), The Stikine River drainage only" to read as follows:

§ 24 Customary and traditional use determinations.

(a) * * *

(1) * * *

Area	Species	Determination
GMU 1(B) The Stikine River drain- ages only.	Moose	No determination.

2. In the table at § 24(a)(2) Fish and shellfish determinations, add the following entry to the columns of "Area", "Species", and "Determination", following the last entry for "Kuskokwim Area":

§ 24 Customary and traditional use determinations.

(a) * * *

(2) * * *

Area	Species	Determination
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Dated: March 25, 1994.

Ronald B. McCoy,
Interim Chair, Federal Subsistence Board.
Michael A. Barton,
Regional Forester, USDA-Forest Service.
[FR Doc. 94-12955 Filed 5-26-94; 8:45 am]
BILLING CODE 4310-55-M, 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH29-1-6066; FRL-4854-9]

Approval And Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection
Agency (USEPA).
ACTION: Final rule.

SUMMARY: On November 14, 1991, Ohio submitted major revisions to its particulate matter regulations to make its State Implementation Plan (SIP) consistent with its Statewide regulations and to satisfy Clean Air Act requirements for the Cleveland and Steubenville nonattainment areas. Ohio submitted supplemental material on December 4, 1991, and January 8, 1992. USEPA published a notice of proposed rulemaking on August 3, 1993, at 58 FR 41218. Six letters were submitted commenting on this proposal. Although several commenters requested delay of this final rulemaking, such delay is impermissible under section 110(k) of the Act. USEPA has reviewed the submitted comments, and is taking final action granting limited approval/limited disapproval as proposed, i.e. approving all regulations except for two paragraphs, but determining that the plan does not fully satisfy requirements under Part D of Title I of the Act for the Cleveland and Steubenville areas. If the relevant deficiencies are not remedied within 18 months, the first of the two sanctions pursuant to section 179(b) of the Clean Air Act will take effect.

DATE: This action is effective June 27, 1994.

ADDRESSES: Copies of the State's submittals, the public comment letters, and USEPA's technical support document of February 24, 1994 are available for inspection at the following address: (It is recommended that you telephone John Summerhays at (312) 886-6067, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency,
Region 5, Air and Radiation Division
(AE-17J), 77 West Jackson Boulevard,
Chicago, Illinois 60604.

A copy of this revision to the Ohio SIP is available for inspection at: U.S. Environmental Protection Agency, Attn: Jerry Kurtzweg (6102), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Enforcement Branch (AE-17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6067.

SUPPLEMENTARY INFORMATION:

I. Background

Ohio submitted major revisions to its particulate matter regulations on November 14, 1991, with supplemental submittals on December 4, 1991, and January 8, 1992. USEPA published notice of proposed rulemaking on August 3, 1993, at 58 FR 41218, proposing limited approval of these submittals. The notice of proposed rulemaking includes a history of requirements and State submittals, a description of Ohio's submittal, a review of each submitted regulation, and reviews of whether requirements in section 189 (including requirements for attainment demonstrations and reasonably available control measures (RACM)) and elsewhere in the Clean Air Act are satisfied, concluding with a delineation of the proposed action. For convenience, this section will provide highlights of relevant history and the next section will repeat the description of the State submittal that was provided in the notice of proposed rulemaking. A third section will summarize the remainder of the notice of proposed rulemaking, including the proposed action. A fourth section of today's notice will summarize and review the public comments on the notice of proposed rulemaking. The final section of discussion in this notice will describe the final action on the State's submittal.

Ohio submitted its original SIP for particulate matter on January 31, 1972, and submitted substantial revisions on August 4, 1972. USEPA approved the plan and the revisions, most notably including several regulations in Chapter AP-3 (Particulate Matter Standards), on April 15, 1974, at 39 FR 13539. Revisions to AP-3-04, submitted on January 25, 1974, were approved on September 23, 1976, at 41 FR 41692. On August 10, 1976, Ohio submitted EP-12 (Open Burning), which USEPA approved on February 3, 1978, at 43 FR 4611.

Although the State provided various submittals between June 1980 and March 1985, and USEPA proposed rulemaking to approve these revisions on January 2, 1987 (52 FR 91), these

submittals were subsequently withdrawn and no Statewide revisions were approved into the SIP. Thus, with the exception of a small number of source-specific limitations, the previously approved Ohio SIP for particulate matter reflects the rules approved in 1974 and 1976, i.e. the 1972 version of the rules now codified in Ohio Administrative Code (OAC) Chapter 3745-17 (Particulate Matter Standards) and the 1976 version of the rules now codified in OAC Chapter 3745-19 (Open Burning Standards).

On July 1, 1987, USEPA revised the National Ambient Air Quality Standards (NAAQS) for particulate matter, refocusing the standard on smaller particles. Pursuant to the Clean Air Act Amendments of 1990,¹ Cuyahoga County and the Steubenville area (including portions of Jefferson County, Ohio, and Brooke County, West Virginia) were designated nonattainment for this revised standard, and the State was required to submit plan revisions to assure attainment, require RACM, and satisfy other requirements for these two areas.

II. Description of Ohio's Submittal

The State's submittal of November 14, 1991, as supplemented December 4, 1991, and January 8, 1992, consisted of two principal elements: (1) Statewide regulations, emissions, and modeling information for Cuyahoga County and the Steubenville area. The Statewide regulations, submitted pursuant to Section 110, reflect substantial revisions to the 1974 regulations presently in the SIP, and constitute the regulations that are presently maintaining the air quality standards in much of the State. The materials relating to the Cuyahoga County and Steubenville nonattainment areas were submitted pursuant to Part D of Title I of the Act, and include the more stringent regulations that Ohio identified as needed to attain the standards in these areas.

The regulations submitted by Ohio include all of the rules in OAC Chapter 3745-17 except Rule 3745-17-05 ("Nondegradation policy") and all rules in OAC Chapter 3745-75. (Rule 3745-17-06 contains no language and is reserved.) The specific submitted rules in Chapter 3745-17 (Particulate Matter

¹ The 1990 Amendments to the Clean Air Act made significant changes to the Air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the particulate matter national ambient air quality standards (see Pub. L. No. 101-549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended, 42 U.S.C. sections 7401 et seq.

Standards) and associated titles are as follows:

- Rule 3745-17-01—Definitions
- Rule 3745-17-02—Ambient air quality standards
- Rule 3745-17-03—Measurement methods and procedures
- Rule 3745-17-04—Compliance time schedules
- Rule 3745-17-07—Control of visible particulate emissions from stationary sources
- Rule 3745-17-08—Restriction of emission of fugitive dust
- Rule 3745-17-09—Restrictions on particulate emissions and odors from incinerators
- Rule 3745-17-10—Restrictions on particulate emissions from fuel burning equipment
- Rule 3745-17-11—Restrictions on particulate emissions from industrial processes
- Rule 3745-17-12—Additional restrictions on particulate emissions from specific air contaminant sources in Cuyahoga County
- Rule 3745-17-13—Additional restrictions on particulate emissions from specific air contaminant sources in Jefferson County
- Rule 3745-17-14—Contingency plan requirements for Cuyahoga and Jefferson Counties

The specific submitted rules in Chapter 3745-75 (Infectious Waste Incinerator Limitations) and associated titles are as follows:

- Rule 3745-75-01—Applicability and definitions
- Rule 3745-75-02—Emission limits
- Rule 3745-75-03—Design parameters and operating restrictions
- Rule 3745-75-04—Monitoring requirements
- Rule 3745-75-05—Recordkeeping
- Rule 3745-75-06—Certification and compliance time schedules

Rules 3745-17-01 through 3745-17-11 and Rules 3745-75-01 through 3745-75-06 apply Statewide. Rule 3745-17-12 applies only to selected sources in Cuyahoga County. Rule 3745-17-13 applies only to selected sources in Jefferson County. Rule 3745-17-14 applies only to identified sources in Cuyahoga and Jefferson Counties.

A second group of elements of Ohio's submittal is the documentation of the State's demonstration that the regulations provide for attainment in Cuyahoga County and in the Steubenville area, including a comprehensive emissions inventory and documentation of a dispersion modeling analysis. A third group of elements in Ohio's submittal is administrative and regulatory material, principally to demonstrate the adequacy of the State's rule adoption process.

III. Summary of Review in Notice of Proposed Rulemaking

The notice of proposed rulemaking provided a regulation-by-regulation review of the State's submittal. Since the public comments did not question the review of most of these regulations, this review is not repeated here. The test method for measuring solids in quench water, given in Rule 3745-17-03(B)(10)(c), was found not approvable because the provision for monthly averaging provides insufficient limitation on 24 hour average emissions levels and allows noncompliance with the limit for a majority of the time. The quench water limit in Rule 3745-17-12(P)(6)(a) was found not approvable simply because it is inseparable from the unapprovable test method in Rule 3745-17-03(B)(10)(c). Otherwise, the conclusion of this review was that all regulations are approvable.

The stack opacity provisions of Rule 3745-17-07(A) contain several provisions allowing sources to claim exemptions from the applicable opacity limitation due to factors such as malfunction, startups, shutdowns, soot blowing, and ash pulling. Generally, under the CAA and U.S. EPA policy, sources are required to meet, without interruption, all applicable emission limitations and other control requirements. For an exemption from such requirement of continuous compliance to be justified, the source must prove that an exemption applies and that the violation could not have been prevented.

In accordance with these principles, USEPA has conducted a further evaluation of various aspects of the stack opacity provisions of Rule 3745-17-07(A). This rule provides that stacks must generally exhibit 20 percent opacity or less, except for one 6-minute period of up to 60 percent opacity. Exempted from these limitations are restricted conditions of malfunctions, startups, shutdowns, soot blowing, and ash pulling. The rule authorizing the exemptions is approvable so long as it is interpreted and applied consistently with the requirements of the CAA and U.S. EPA policy regarding such exemptions.

In the case of malfunctions, the exemption is not available unless the malfunction was unavoidable and unless the source has notified the State of the claimed malfunction, demonstrated that it performed proper operation and maintenance, and met various other conditions. USEPA policy requires such regulations to place the burden of proof on the source to demonstrate that the conditions for

applicability of the malfunction exemption are met, including: that the claimed malfunction was caused by circumstances entirely beyond the control of the source; could not have been prevented through installation of proper control equipment, or through proper operation and maintenance procedures; and that any activity which is or should be planned, or can be foreseen and avoided, is not properly excused as a malfunction. USEPA interprets Ohio's regulation to place this burden of proof appropriately on the source. In accordance with USEPA policy, USEPA interprets Ohio's regulation to provide that the enforcement authority (Ohio EPA, USEPA, or both) must then evaluate whether the exemption has in fact been demonstrated to apply.

Similarly, in the case of startups and shutdowns, an exemption from the general opacity limit is available only until flue gas temperature reaches 250 °F or for a 3-hour period, depending on the control equipment in place. In cases where a source claims high opacity values are to be exempted, USEPA interprets Ohio's rule to place the burden on the source to document, based on temperature or operation records as appropriate, that the exemption applies. USEPA also interprets the exemption for soot blowing and ash handling to apply only if the source can provide documentary evidence to demonstrate to the satisfaction of the enforcement agency (Ohio EPA, USEPA, or both) that the exemption criteria are satisfied.

USEPA is approving the rule containing above types of exemptions based specifically on these interpretations of Ohio's rules, and with the understanding that the exemptions are to be strictly interpreted, as well as applied in a method that is consistent with the prohibition of relaxation of existing control requirements in section 193 of the CAA, 42 U.S.C. 7515. For further guidance on interpretation of exemptions see 42 FR 21472 (April 27, 1977).

Additionally, with regard to the above exemptions, U.S. EPA will treat the submission of any incomplete or erroneous information by a source as a violation of this regulation, and will not allow an exemption supported by such information. U.S. EPA's action does not constitute advance approval of any exemptions which may be claimed or issued under Ohio's regulations. Thus, U.S. EPA may take independent enforcement action to the extent allowed by sections 113 and any other applicable provisions of the CAA.

notwithstanding the issuance of an exemption by the State.

The fourth section of the notice of proposed rulemaking provided a review of whether the submittal satisfied the requirements of section 189. These requirements apply to plans for particulate matter nonattainment areas, which in Ohio include Cuyahoga County and a portion of Jefferson County in and near Steubenville. Section 189(a)(1)(A) requires a suitable new source review program, and is being addressed in a separate rulemaking. Section 189(a)(1)(B) requires a demonstration that the plan will provide for attainment no later than December 31, 1994, or, alternatively, a demonstration that attainment by this date is impracticable. Section 189(a)(1)(C) requires the implementation of RACM by December 10, 1993. Finally, Section 189(e) provides that "control requirements * * * for major stationary sources of PM-10 shall also apply to major stationary sources of PM-10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the standard in the area."

The notice of proposed rulemaking provided a lengthy review of the attainment demonstrations for Cuyahoga County and the Steubenville areas. This discussion included a detailed description of the limits and means of estimating corresponding allowable emissions from stack sources, process fugitive sources, and open dust sources, as well as the modeling procedures used to evaluate the air quality impacts of

these emissions. Although the State used appropriate estimates of emissions allowed under applicable limitations for most sources, the emissions estimates for a few sources in the Steubenville area were found to significantly underestimate the emissions permitted by the applicable regulations. The notice discussed emissions from Wheeling-Pittsburgh Steel's basic oxygen furnace (BOF) in particular detail, as well as discussing coke oven emissions and condensable particulate matter. Most aspects of the dispersion modeling analysis were found acceptable. However, the notice referenced various deficiencies in both the emissions inventory and modeling analysis identified in the technical support documents for this rulemaking, including improper selection of an allowable emissions rate for certain boilers, use of urban dispersion coefficients in modeling area sources, and inadequate consideration of complex terrain. Based on a further modeling analysis, USEPA proposed to find that the Cuyahoga County plan assures attainment, provided the State makes its quench water limit fully enforceable, but that the Steubenville area plan does not assure attainment.

The next element of the notice of proposed rulemaking concerned the requirement for RACM. In accordance with the "General Preamble," published April 16, 1992, at 57 FR 13498, USEPA believes this requirement can be satisfied without full implementation of all potentially reasonably available control measures, provided attainment

is assured by the RACM deadline of December 10, 1993, and provided attainment could not be expedited by more rapid implementation of measures. (See 57 FR 13543.) For most of Cuyahoga County, these provisos were found met, and the RACM requirement accordingly satisfied. However, for Ford Motor Company's Cleveland Casting Plant, certain measures necessary for attainment were not required to be implemented until the end of 1994, nor did the State demonstrate that measures required by December 1993 represent the full set of reasonably available control measures. On the other hand, USEPA concluded that the Steubenville area plan did require the full set of reasonably available control measures by December 1993.

The final element of the discussion of Section 189 requirements concerned provisions in Section 189(e) relating to particulate matter precursors. The conclusion of this discussion was that such precursors do not contribute significantly to particulate matter concentrations which exceed the standard in either area.

A fifth section of the notice of proposed rulemaking evaluated whether Ohio's submittals satisfied other Clean Air Act requirements. The principal relevant requirements beyond those of Section 189 are found in section 172(c). The following table summarizes the requirements in each paragraph under section 172(c) and the conclusion in the notice of proposed rulemaking as to whether each requirement is satisfied in each of the two nonattainment areas:

Section	Requirement	Conclusion of review
172(c)(1)	RACM	Satisfied in Jefferson but not in Cuyahoga.
172(c)(2)	RFP	Satisfied in Cuyahoga ² but not in Jefferson.
172(c)(3)	Suitable inventory	Satisfied in Cuyahoga ² but not in Jefferson.
172(c)(4)	Growth margin	Satisfied in both areas.
172(c)(5)	Suitable permit program	Not addressed in this rulemaking.
172(c)(6)	Enforceability	See text.
172(c)(7)	Proper adoption	Satisfied in both areas.
172(c)(8)	Equivalent procedures	Not applicable to either area.
172(c)(9)	Contingency plans	Not addressed in this rulemaking.

² The proposed approval with respect to these paragraphs was contingent on suitable revision of the test method for the coke quenching limit.

Section 172(c)(6), which requires that limitations sufficient to provide for attainment be enforceable by the State and USEPA, was found to be satisfied with respect to all but two paragraphs (relating to quench water quality) for Cuyahoga County² and was found not to be satisfied for the Steubenville area.

The final element in the notice of proposed rulemaking was a delineation of the proposed rulemaking action. The action proposed was limited approval.

Specifically, USEPA proposed to approve all of the regulations except for the two paragraphs noted above relating to quench water quality, i.e. paragraph (B)(10)(c) of Rule 3745-17-03 and paragraph (P)(6)(a) of Rule 3745-17-12. At the same time, USEPA proposed to approve these paragraphs if the test method is revised to provide either a single day limit or weekly averaging of 5 days' samples.

USEPA also proposed to find that the State's submittals satisfy several Part D requirements. Most notably, USEPA proposed to find that the Cuyahoga County plan satisfied the requirement to assure attainment, provided that the limitation on coke quench water quality is made properly enforceable, and proposed to find that the Steubenville area plan satisfied the requirement for timely RACM. However, USEPA proposed to find that certain

requirements of Part D were not satisfied for these two areas. Most notably, USEPA proposed to find that the Cuyahoga County plan did not satisfy the requirement for timely RACM, and proposed to find that the Steubenville area plan did not satisfy the requirement for assuring attainment. The notice of proposed rulemaking indicated that the RACM requirement would be satisfied in Cuyahoga County if attainment were assured by December 1993, which would be the case if the measures currently required at Ford by December 1994 were to be required by December 1993 and the quench test method were revised. Finally, USEPA proposed to determine that sources of particulate matter precursors do not presently contribute significantly to violations of the particulate matter standard in Ohio.

IV. Summary and Review of Comments

Six letters were submitted commenting on this proposal, including letters from the Ohio Environmental Protection Agency (OEPA), Wheeling-Pittsburgh Steel Company, Centor Energy Corporation, the law firm Fuller & Henry (representing a group of Ohio utilities), the law firm Porter, Wright, Morris & Arthur (representing Ford Motor Corporation), and the law firm Squires, Sanders & Dempsey (representing several steel companies). The following is a summary of each comment and USEPA's review of the comment:

Comment: Several commenters requested that USEPA defer rulemaking on Ohio's submittal. These commenters noted that the rules are under appeal to the State's Environmental Board of Review and that several revisions to these rules are anticipated within the next few months. These commenters requested that USEPA wait for these anticipated rule revisions before proceeding with rulemaking.

One commenter provided a more detailed rationale for USEPA to defer rulemaking. First, given the commenter's presumption that the Ohio rules will be changed in the near future, USEPA approval of the current rules would soon result in a situation in which companies confront State rules that differ from USEPA-approved rules. Second, the commenter states that USEPA cannot enforce a State rule which a State court has declared void ab initio. The commenter urges that USEPA defer rulemaking to avoid this confusion as to enforceable requirements.

Response: Section 110(k)(2) requires action on SIP submittals within 12 months of the date USEPA finds the

submittal complete. Since USEPA found this submittal complete on January 28, 1992, USEPA is long overdue for completing action on the State's submittal, and no further delay is justified.

USEPA cannot defer rulemaking on rules submitted by the State simply because the State may subsequently revise those rules. Differences between State enforceable rules and federally enforceable rules also arise whenever USEPA disapproves a State rule. In neither case does the potential for such differences constitute basis for USEPA action (or inaction), and in both cases the set of rules approved by USEPA are fully federally enforceable. Regardless of the merits of the commenter's statements for cases in which a State court has declared rules void, in this case no State court has declared judgment on these rules and no evidence was provided that the rules do not remain in effect at the State level. USEPA is acting on the rules as Ohio has submitted them for approval.

If the State does adopt and submit the anticipated rule revisions, USEPA intends to rulemake promptly on such submittal. Some of the anticipated revisions are discussed below in the context of other comments. To the extent that these revisions simply revisit issues already discussed in the notice of proposed rulemaking and do not raise new issues, USEPA can publish notice of final action on such revisions without another notice of proposed rulemaking.

Comment: Several commenters found the visible emissions limitation on storage piles to be unreasonably strict. This limitation, in Rule 3745-17-07(B)(6), permits no visible emissions from storage piles except for 13 minutes per hour. These commenters noted the likelihood that continuous equipment operation would lead to continuous visible emissions, and so the limit "is impossible to achieve." One commenter presented a survey of visible emissions readings at storage piles in which 21 of the 22 hours of readings exceeded the limit. This commenter also noted that every part of the Ohio EPA data set used to support its rule development that was taken of vehicular traffic at a coal pile showed greater than 13 minutes per hour of visible emissions. This commenter was further concerned that Ohio apparently intended to apply the above limitation to load-in operations, which the commenter believes should be given a separate opacity limit. Another commenter also stated that it had taken readings which "indicated that, with RACM in place (emphasis in original), the operations on [an observed

storage pile] could not comply" with the limit.

A related concern regards the method used to evaluate visible emissions from storage piles. One commenter objected that the question of whether Method 22 readings should be taken at a fixed point or a moving point depending on the movement of a bulldozer is not addressed in any formal guidance and is based on "'guidance' consist[ing] primarily of a memo written by John Summerhays" of USEPA Region V. The commenter notes further that the "Summerhays memo" is inconsistent, insofar as it recommends that visible emissions for roadways be read at a fixed point but for storage pile be read at a variable location reflecting source relocation. Furthermore, the commenter believes that most of the material that becomes airborne near a bulldozer promptly redeposits and should not be counted as visible emissions. For these reasons, the commenter believes that the method is impracticable and unclear and should not be approved. In addition, several other commenters indicated that Ohio's visible emissions limitation, as evaluated by this method, cannot reasonably be achieved.

Response: The commenters have provided evidence suggesting that Ohio's limit is difficult to meet. Nevertheless, USEPA believes that this limitation is achievable. Ohio submittal included a study involving opacity readings at numerous storage piles which was used to develop these limits. Although the commenters have provided supplemental data and reviewed the subset of data from Ohio's study that was obtained at coal piles, the commenters have not provided a rationale for concluding that coal piles are different from other types of storage piles or that the limits which Ohio's study shows to be reasonable for storage piles in general are not reasonable for coal piles in particular. For example, the commenters have not shown either that coal piles are more continuously worked or that coal pile operations are more prone to cause emissions than other storage piles. One commenter's own data set includes results implying that adequate moisture leads to compliance, and it is possible to achieve compliance by restricting operations. The commenters did not provide any detailed information on the control measures in place at the time of the readings, and thus have not demonstrated that a greater level of control could not achieve the limit. The commenters have also not addressed typical durations of truck or stacker loading or demonstrated that such loading cannot be restricted in duration

or conducted with curtains or other controls to achieve compliance with the State's limit. Notwithstanding the commenters' concerns, in accordance with Section 116, USEPA cannot disapprove an enforceable, achievable State submittal because it is too stringent.

The commenters have correctly noted that USEPA interprets Method 22 to provide for evaluating whether visible emissions are occurring anywhere at a storage pile. The alternative is to conduct this evaluation only at a fixed point. This alternative would provide meaningless results, since visible emissions would likely only be identified for those moments when an emissions generating event (e.g., bulldozing) happened to occur at the fixed location. Although the commenter is correct that Method 22 is not explicit on this issue, USEPA's interpretation is longstanding and is analogous to USEPA's longstanding interpretation that Method 9 opacity readings are also to be taken at the densest part of a plume at the time of each reading. Clearly the interpretation of test methods affects the stringency of the limitation, but this does not constitute grounds for disapproving the State's submittal, nor does it constitute grounds for altering USEPA's interpretation of the test method.

USEPA recognizes that the State is discussing potential rule revisions with the companies that appealed its rules. However, no specific revisions have been identified or proposed. If and when the State adopts and submits an alternative limitation (e.g., an appropriate opacity limitation), USEPA will conduct prompt rulemaking on such a revision.

Comment: Several commenters objected to the limits on the number of minutes of visible emissions from roadways and labeled these limits unreasonable. One commenter notes that "Method 22 would allow observations to be made at the rear wheels while following vehicles down the road. As the Utilities continuously have hauling trucks entering and exiting the premises, this standard is very difficult, if not impossible, to meet."

Response: Part of Ohio's submittal is a summary of a study demonstrating that the limits it adopted can be achieved. As with the storage pile limit, discussed above, USEPA believes that this limit is achievable. Also as with the storage pile limit, USEPA cannot disapprove a State submittal simply because commenters consider the limit too stringent. Again, if and when the State adopts and submits a replacement limitation (e.g., an appropriate opacity

limit), USEPA will conduct prompt rulemaking on such replacement limitation.

Comment: One commenter expressed concern about the 20 percent opacity/3-minute average limit as applied to ash handling. The commenter concedes that emissions are generally low when ash is pneumatically conveyed, but recommended 6 minute averaging to permit reasonable time to clean up spills. For loading of ash into dump trucks, the commenter noted limits on the extent to which the ash could be watered, summarized a series of opacity readings showing about half of the 3-minute averages exceeding 20 percent, and recommended a 35 percent opacity limit.

Response: For pneumatic loading, the commenter has conceded that the limit is generally achievable, and even with respect to spill conditions has not demonstrated that reasonable measures will not yield compliance with the 20 percent/3-minute average limit. For dump truck loading, the commenter has not indicated what control measures were undertaken during the ash loading events that did and did not comply with the 20 percent limit or what differences might explain why compliance occurs in some cases and not in others. Therefore, the commenter's information does not demonstrate the limits to be infeasible and, in fact, suggests that reasonable measures yield compliance.

Comment: One commenter expressed concern that the limitations imposed for open dust sources in Cuyahoga County should not be considered to represent best available technology.

Response: "Best available technology" is a requirement for new sources, which are not addressed in this rulemaking. Therefore, this comment is not germane to this rulemaking.

Comment: One commenter disagrees with USEPA's proposed finding that Ohio's rules do not require timely implementation of RACM at Ford Motor Company's Cleveland Casting Plant. The comments focus on the cupolas, stating that control options previously under consideration are beyond what controls should be considered reasonably available. Nevertheless, the commenter states that "Ford has already submitted to Ohio EPA an alternative control strategy that would provide for all reductions necessary for attainment to occur by December 10, 1993."

Response: Although the commenter believes that further control of the cupolas are not reasonably available, the commenter has not provided any detailed information to support its view. Also, the commenter does not address other emission points identified as not

demonstrated to have RACM by December 10, 1993. No revised rules have been submitted, and so USEPA must conclude that the submitted rules do not satisfy the requirement in section 189(a)(1)(C) for RACM in Cuyahoga County.

The notice of proposed rulemaking notes that one alternative for satisfying section 189(a)(1)(C) would be to advance the post-1993 control requirements so as to assure attainment by December 1993. Ford has apparently recommended State rule revisions which would satisfy the RACM requirement in this manner. If Ohio adopts and submits rule revisions which require that all measures necessary for attainment be implemented by December 1993, and no substantive new issues are raised by the submittal, USEPA would be able to publish final rulemaking approving such a revision and concluding that the RACM requirement is satisfied.

Comment: A commenter notes that Ford has challenged various provisions of the State rules, including the open dust limits, the reduced exemptions from the general stack opacity limit for startup and shutdown, the procedure for establishing equivalent visible emission limits, and the provision that contingency measures could be triggered based on air quality data collected before all SIP control measures are implemented.

Response: The commenter has not provided a basis for USEPA to disapprove these provisions which were proposed for approval. If the State adopts and submits revisions to these aspects of its plan, USEPA will conduct prompt rulemaking on the submittal. It should be noted that Ford's revised compliance schedule will provide that all measures shown necessary for attainment will be implemented prior to the first year of monitoring data (i.e., 1994) which under Section 188(d) is to be used to judge attainment.

Comment: Wheeling-Pittsburgh Steel provides extensive discussion of a modeling reanalysis it plans to conduct both to reassess emissions from its facility and to reassess the impact of these emissions.

Response: These comments do not provide any modeling results or other information to indicate that the current rules provide for attainment. These comments also propose several modeling techniques which differ from standard practice (e.g., the use of plume rise for the basic oxygen furnace (BOF) based on the Buoyant Line Plume Model) that have not been justified. In the absence of detailed documentation of a modeling analysis properly

demonstrating that attainment is assured, USEPA must continue to conclude that the requirement in Section 189(a)(1)(B) for assuring attainment has not been satisfied.

Comment: A commenter identifies several reasons to believe that the BOF at Wheeling-Pittsburgh Steel does not have a high fugitive emission rate. First, no exceedances have been monitored since 1989. Second, these emissions have been in compliance with the 20 percent/3-minute average opacity limit. Third, evidence included in the State's SIP submittal indicates that modeling more closely reproduces monitored concentrations if a relatively modest emission rate is assumed. This commenter expresses concern that this portion of the SIP submittal may have been overlooked.

Response: Each of the commenter's reasons for expecting low BOF fugitive emissions may be addressed individually. First, the commenter is correct that no exceedances have been observed after 1989. However, monitoring data provide only a limited indication of fugitive emissions from the BOF, since monitoring data reflect the impact of multiple sources and reflect actual emissions rather than allowable emissions. More generally, in order to assure attainment, the State's plan must establish limits such that attainment would occur even if all sources were emitting at full allowable emissions. (See *Guidelines on Air Quality Models*.) Thus, the absence of monitored exceedances does not indicate that emissions at the BOF or at other nearby sources are sufficiently limited to assure attainment.

Second, the commenter notes that the BOF is in compliance with the applicable opacity limit. However, this comment does not address the key question here, namely the quantity of emissions that the applicable opacity limit permits from this source.

Third, the commenter notes that a modeling-monitoring comparison suggests relatively low BOF emissions. This comparison is described most fully in Appendix H to a document presenting the control program suggested by Wheeling-Pittsburgh Steel Corporation, a document which is included as section (d) of Appendix I of the State's submittal. USEPA's technical support document for this final rulemaking provides a more detailed review of this comparison. USEPA finds the comparison unreliable, because the analysis found concentrations that did not change in accordance with changes in emissions, because differences among current allowable emissions and actual emissions at various times were not

accounted for, and because spatial prediction errors (particularly in complex terrain) and other factors introduce substantial uncertainties into this type of comparison. Consequently, the comparison between modeled and monitored concentrations does not justify the low emission rate recommended by the company.

Contrary to the commenter's concern, the proposed rulemaking does reflect a review of the full document prepared by a Wheeling-Pittsburgh Steel contractor and submitted by the State. The principal argument in this document relates to the quantity of solids collected in the pollution control equipment, and is addressed at column 1 of 58 FR 41223 of the notice of proposed rulemaking. It should be noted that no specific basis for estimating 99.5 percent capture has been provided, and this estimate yields an emission rate substantially lower than a "BOF monitor" emission factor also provided in AP-42. Appendix H also provides visible emissions data showing opacity values slightly above allowable levels, but concedes that these data do not support any particular emission rate.

In summary, the notice of proposed rulemaking reflected consideration of the evidence contained in the State's submittal, concluded that allowable emissions at the BOF are substantially greater than those assumed in the attainment demonstration, and concluded that the State's analysis did not adequately demonstrate attainment. The commenters have not provided adequate basis to alter this finding.

Comment: A commenter believes that the State's submittal adequately addresses intermediate terrain. The commenter states that "at the time of our analysis (January through September 1991), no EPA approved model existed for intermediate terrain processing. We used software developed for PSD applications in complex terrain in West Virginia and Pennsylvania and approved by EPA Region III."

Response: USEPA guidance now and at the time of SIP development (1991) requires the use of both a simple terrain model and a complex terrain model at all intermediate terrain receptors. The higher estimated concentration on an hour by hour basis is used to judge attainment. (See *Guidelines on Air Quality Models* and a memorandum on the subject dated June 8, 1989, to Alan Cimorelli from Joseph Tikvar, chief of USEPA's Source Receptor Analysis Branch.) The commenter is correct that no single model was available at the time of SIP development (1991) to perform the full analysis. Nevertheless, procedures were (and are) available to

perform such an analysis (or, in many cases, to perform briefer analyses demonstrably giving the same results), some of which were recommended to Ohio and West Virginia in a meeting with USEPA in March 1991. As for PSD applications, USEPA does not approve PSD permits in West Virginia or Pennsylvania. Although it is conceivable that USEPA may have failed to identify inappropriate treatment of intermediate terrain in selected PSD cases, the commenter has not shown that a precedent has been knowingly set that would be germane to this SIP analysis. Thus, no basis for exempting the State from this requirement exists.

Comment: The State comments that condensable particulate matter emissions are negligible in the Steubenville area, but agrees to reexamine the issue and to address the issue in further documentation to be provided to USEPA.

Response: The technical support document for the notice of proposed rulemaking identified absence of condensable particulate matter in the Steubenville emissions inventory as one of the deficiencies in the area's attainment demonstration. These emissions may or may not be minor, and this deficiency cannot be considered addressed without evaluation of available information for the emission points contained in the inventory.

Comment: The State confirms USEPA's understanding that limits in Rule 3745-17-08(B) apply to all coke pushing operations and all vented material handling operations in the State.

Response: The notice of proposed rulemaking expressed concern as to the enforceability of Rule 3745-17-08(B) for coke pushing and ventable materials handling operations. This rule requires implementation of at least one of nine reasonably available control measures, and sets a limit of 0.030 grains per dry standard cubic foot (or no visible emissions) if venting is required. USEPA proposed to interpret this rule as applying this limit to coke pushing and ventable material handling operations. The State's comment confirms that this interpretation is appropriate and consistent with the State's interpretation.

Comment: One commenter noted that USEPA's notice of proposed rulemaking incorrectly characterized the limit for the one allowed excursion of the general stack opacity limit as being 27 percent.

Response: The commenter is correct. The Ohio general stack opacity rule being approved today allows the one permissible 6-minute average excursion

of the usual 20 percent opacity limit to have up to 60 percent opacity.

Comment: One commenter submitted a lengthy statement of appeal of the State rules, thereby submitting a variety of comments. These comments are described further in USEPA's technical support document for this rulemaking. The comments include expressions of concern about BOF opacity limits, procedures used to adopt these State rules, accuracy of emissions parameters for LTV, and the need for controls given that monitoring shows attainment.

Response: USEPA's technical support document provides a review of each of the submitted comments. In summary, USEPA has substantial evidence that the BOF opacity limit is reasonably achievable, USEPA remains satisfied with the procedures used to adopt these rules, USEPA has no reason to doubt any specific emission parameter (other than the allowable emission rate for coke quenching), and monitoring does not address whether emissions at full allowable rates would cause violations.

Comment: Ohio EPA indicated plans to modify its rules in several ways to address USEPA's concerns. Ohio EPA intends to revise its quench water test method to provide for weekly averaging of 5 days' samples. Ohio EPA intends to submit a revised attainment demonstration for the Steubenville area. Ohio EPA intends to modify its rules to require that the entire control plan for Ford's Cleveland Casting Plant be implemented by December 10, 1993, thereby providing timely satisfaction of the RACM requirement in Section 189(a)(1)(C).

Response: It appears likely that the anticipated rule revisions concerning quench water testing and concerning Ford's compliance schedule will satisfactorily address the relevant USEPA concerns. However, USEPA cannot base its review on anticipated rule revisions and analyses which have not yet been submitted. The comments do not justify revised judgment of the November 1991 submittal. However, with respect to the Cuyahoga County plan, if Ohio adopts and submits rule revisions as indicated in its comments, USEPA expects to be able to publish a notice of final approval of this plan, without further proposal.

With respect to Jefferson County, separate rulemaking is being conducted with respect to the plan for the other part of the Steubenville area, in Brooke County, West Virginia. A notice of proposed rulemaking was published on January 7, 1994, at 59 FR 988. As a comment on the January rulemaking on West Virginia's SIP, Wheeling-Pittsburgh Steel submitted a revised

modeling analysis. This material does not warrant revising the proposed evaluation of Ohio's submittal for several reasons. First, this material was submitted as a comment on a separate rulemaking, was not submitted with respect to this rulemaking or within the comment period for this rulemaking, and thus is not directly relevant to this rulemaking. Second, as discussed in more detail in a supplemental USEPA technical support document, a review of this material indicates that unjustified nonreference modeling and other inappropriate modeling techniques were used. Third, these materials do not dispute USEPA's judgment of Ohio's submittal, but instead seek to show that an alternate analysis would demonstrate the adequacy of the State's plan to assure attainment. Section 189(a)(1)(B) requires that the State submit a demonstration that its plan assures attainment (or that attainment is infeasible). For these reasons, Wheeling-Pittsburgh Steel's comments do not alter USEPA's view that the State has not demonstrated that its plan for the Steubenville area assures attainment.

V. Today's Action

Based on the review underlying the proposed action and a review of comments on that proposal, USEPA is today granting limited approval/limited disapproval of Ohio's particulate matter submittal. Specifically, USEPA is today making final the action proposed on August 3, 1993 (58 FR 41218). Thus, USEPA is approving all regulations in Chapter 3745-17 and Chapter 3745-75 except for Rule 3745-17-05 (which was not submitted) and except for Rule 3745-17-12(P)(6)(a) and Rule 3745-17-03(B)(10)(c) (pertaining to quench water quality). USEPA is disapproving Rule 3745-17-12(P)(6)(a) and Rule 3745-17-03(B)(10)(c).

On the other hand, USEPA is today issuing final limited disapproval of Ohio's plans for Cuyahoga and Jefferson Counties for failure to satisfy certain requirements of Part D. The bases for the disapproval of the Cuyahoga County plan are the failure to satisfy the requirement for RACM given in sections 189(a)(1)(C) and 172(c)(1) and the failure to assure attainment as required in section 189(a)(1)(B) and to satisfy the related requirements in sections 172(c)(2), 172(c)(3), and 172(c)(6). Although the notice of proposed rulemaking did not explicitly propose to find failure to assure attainment, the proposal made clear that assurance of attainment was contingent on remedying deficiencies in the State's quench water test method. Since this method was not revised, USEPA now

finds that the State has not demonstrated that the plan assures attainment. The basis for the disapproval of the Jefferson County plan is the failure to satisfy the requirement to assure attainment given in sections 189(a)(1)(B) and the related requirements in sections 172(c)(2), 172(c)(3), and 172(c)(6), due to the use of inappropriate emissions estimates for Wheeling-Pittsburgh Steel's basic oxygen furnace, coke ovens, and other emission sources, and various modeling issues.

The notice of proposed rulemaking discusses alternatives by which the Cuyahoga County plan could satisfy the requirement for RACM. The State has committed in essence to implementing one of these alternatives, namely to advance Ford's compliance deadlines, such that all measures reflected in the submitted attainment demonstration are required by December 1993. The notice of proposed rulemaking also specifies remedies for the deficiency in the coke quenching test method. Thus, if the State submits rules that have been revised accordingly, USEPA can proceed directly to final approval of these revisions without further proposal, provided these revisions do not raise new issues. Such revisions would address all identified bases for disapproving the Cuyahoga County plan, and so such USEPA rulemaking could reverse today's limited disapproval of the Cuyahoga County plan and find all particulate matter SIP requirements addressed in today's rulemaking for this area satisfied.³ Note that revisions to the Steubenville area plan would likely raise new issues and thus would likely require further proposed rulemaking.

Finally, USEPA is today making a final determination on particulate matter precursors consistent with its proposed determination. Specifically, USEPA is today determining that precursors do not contribute significantly to violations of the particulate matter standards in Ohio. As a result, the otherwise applicable provision of Section 189(e) that particulate matter precursor sources must meet the same control requirements as primary sources of particulate matter does not apply.

This disapproval constitutes a disapproval under section 179(a)(2) of the Act (see generally 57 FR 13566-67). As provided under section 179(a) of the Act, one of two sanctions in Section

³Other requirements, notably including the new source review program required in section 189(a)(1)(A) and 173 and the contingency plan required in section 172(c)(9), are not addressed in today's rulemaking.

179(b) is to take effect 18 months from the publication of this final rule unless the relevant deficiencies are corrected in the meantime. The second sanction in Section 179(b) is to take effect 24 months from the publication of this final rule, again unless the relevant deficiencies are corrected in the meantime. These two sanctions are (1) A requirement for two-to-one new source review offsets for sources in or near the Cuyahoga and Jefferson County nonattainment areas and, (2) a sanction against highway funding in these two areas. Separate rulemaking is being conducted to determine which of these sanctions would apply first and to address related questions concerning the effectuation of such sanctions. (See the notice of proposed rulemaking dated October 1, 1993 (58 FR 51270).) Any sanction USEPA imposes must remain in place until USEPA determines that the deficiency has been corrected. This disapproval also triggers the requirement for USEPA to impose a federal implementation plan under section 110(c)(1) of the Act if the deficiencies are not corrected within 2 years.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act 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 Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific

technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225), based on revised SIP processing review tables approved by the Acting Assistant Administrator for Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). On January 6, 1989, the Office of Management and Budget waived Tables Two and Three SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continued in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 26, 1994. 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

Air Pollution control, Environmental protection, Incorporation by Reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 13, 1994.

Valdas V. Adamkus,
Regional Administrator.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

2. Section 52.1870 is amended by adding new paragraph (c)(97) to read as follows:

§ 52.1870 Identification of plan.

(c) * * *
(97) On November 14, 1991, December 4, 1991, and January 8, 1992, OEPA submitted revisions to its particulate matter plan, including Statewide rule revisions, rule revisions for specific facilities in Cuyahoga and Jefferson Counties, and supplemental materials to address the requirements of Part D of Title I of the Clean Air Act for the Cuyahoga and Jefferson County nonattainment areas. Rules 3745-17-03(B)(10)(c) and 3745-17-12(P)(6)(a) (concerning quench water limits) are not approved.

(i) Incorporation by reference.
(A) Rule 3745-17-01—Definitions, effective December 6, 1991.

(B) Rule 3745-17-02—Ambient air quality standards, effective June 14, 1991.

(C) Rule 3745-17-03—Measurement methods and procedures, effective December 6, 1991, except for paragraph (B)(10)(c) which is disapproved.

(D) Rule 3745-17-04—Compliance time schedules, effective December 6, 1991.

(E) Rule 3745-17-07—Control of visible particulate emissions from stationary sources, effective June 14, 1991.

(F) Rule 3745-17-08—Restriction of emission of fugitive dust, effective June 14, 1991.

(G) Rule 3745-17-09—Restrictions on particulate emissions and odors from incinerators, effective July 9, 1991.

(H) Rule 3745-17-10—Restrictions on particulate emissions from fuel burning equipment, effective June 14, 1991.

(I) Rule 3745-17-11—Restrictions on particulate emissions from industrial processes, effective June 14, 1991.

(J) Rule 3745-17-12—Additional restrictions on particulate emissions from specific air contaminant sources in Cuyahoga County, effective December 6, 1991, except for paragraph (P)(6)(a) which is disapproved.

(K) Rule 3745-17-13—Additional restrictions on particulate emissions from specific air contaminant sources in Jefferson County, effective December 6, 1991.

(L) Rule 3745-17-14—Contingency plan requirements for Cuyahoga and Jefferson Counties, effective December 6, 1991.

(M) Rule 3745-75-01—Applicability and definitions, effective July 9, 1991.

(N) Rule 3745-75-02—Emission limits, effective July 9, 1991.

(O) Rule 3745-75-03—Design parameters and operating restrictions, effective July 9, 1991.

(P) Rule 3745-75-04—Monitoring requirements, effective July 9, 1991.

(Q) Rule 3745-75-05—Recordkeeping, effective July 9, 1991.

(R) Rule 3745-75-06—Certification and compliance time schedules, effective July 9, 1991.

(ii) Additional information.

(A) Appendices A through P to a letter from Donald Schregardus to Valdas Adamkus dated November 14, 1991, providing emissions inventories and modeling demonstrations of attainment for the Cleveland and Steubenville areas and providing other related information.

(B) A letter from Donald Schregardus to Valdas Adamkus dated December 4, 1991, and attachments, supplementing the November 14, 1991, submittal.

(C) A letter from Donald Schregardus to Valdas Adamkus dated January 8, 1992, and attachments, supplementing the November 14, 1991, submittal.

3. Section 52.1880 is amended by revising paragraph (d) to read as follows:

§ 52.1880 Control strategy: particulate matter.

(d) Part D—Limited Disapproval—Notwithstanding the approval of rules as specified in § 52.1870(c)(97), USEPA disapproves the plan for Cuyahoga County because the plan fails to require timely implementation of reasonably available control measures and fails to assure attainment, and USEPA disapproves the plan for Jefferson County because the plan fails to assure attainment.

[FR Doc. 94-12919 Filed 5-26-94; 8:45 am]
BILLING CODE 6560-60-P

40 CFR Part 271

[FRL-4888-1]

Nevada: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Nevada has applied for final authorization of

revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The Environmental Protection Agency (EPA) has completed its review of Nevada's application and has made a decision, subject to public review and comment, that Nevada's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Nevada's hazardous waste program revisions. Nevada's application for program revision is available for public review and comment.

DATES: Final authorization for Nevada is effective June 27, 1994 unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Nevada's program revision application must be received by the close of business July 26, 1994.

ADDRESSES: Copies of Nevada's program revision application are available during the business hours of 9 a.m. to 5 p.m. at the following addresses for inspection and copying:

Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 123 W. Nye Lane, Carson City, NV 89710. Phone: 702/687-5872. Contact: L.H. Dodgion, Administrator.

U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, CA 94105. Phone: 415/744-1510.

Written comments should be sent to April Katsura, U.S. EPA Region IX (H-2-2), 75 Hawthorne Street, San Francisco, CA 94105. Phone: 415/744-2030.

FOR FURTHER INFORMATION CONTACT: April Katsura, U.S. EPA Region IX (H-2-2), 75 Hawthorne Street, San Francisco, CA 94105. Phone: 415/744-2030.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to

State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260-266, 268, 270, and 279.

B. Nevada

Nevada initially received final authorization for the base hazardous waste program on November 1, 1985. On June 29, 1992, Nevada received final authorization for revisions to its hazardous waste program, which included substantially all the Federal RCRA implementing regulations published in the Federal Register through July 1, 1991. On May 9, 1994, Nevada submitted an application for additional revision approvals. Today, Nevada is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Nevada's application, and has made an immediate final decision that Nevada's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to approve final authorization for Nevada's hazardous waste program revisions. The public may submit written comments on EPA's immediate final decision up until June 27, 1994. Copies of Nevada's applications for program revision are available for inspection and copying at the locations indicated in the ADDRESSES section of this notice.

Approval of Nevada's program revisions is effective in 60 days unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Nevada is applying for authorization for changes and additions to the Federal RCRA implementing regulations that occurred between July 1, 1991 and July 1, 1993, including the following Federal hazardous waste regulations:

Federal requirement	State analog
Wood Preserving Listings; Technical Corrections (56 FR 30192, July 1, 1991).	Nevada Revised Statutes (NRS) 459.485, 459.490 and 459.520; Nevada Administrative Code (NAC) 444.8632.
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I (56 FR 32688, July 17, 1991).	NRS 459.485, 459.490; 459.520 and 459.525; NAC 444.8632.

Federal requirement	State analog
Land Disposal Restrictions for Electric Arc Furnace Dust (K061) (56 FR 41164, August 19, 1991).	NRS 459.485 and 459.490; NAC 444.8632.
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments II (56 FR 42504, August 27, 1991).	NRS 459.485, 459.490, 459.520 and 459.525; NAC 444.8632.
Exports of Hazardous Waste; Technical Correction (56 FR 45704, September 4, 1991).	NRS 459.485, 459.490 and 459.500; NAC 444.8632.
Coke Ovens Administrative Stay (56 FR 43874, September 5, 1991)	NRS 459.485, 459.490 and 459.525; NAC 444.8632.
Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations (56 FR 66365, December 23, 1991).	NRS 459.485 and 459.490; NAC 444.8632.
Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units (57 FR 3462, January 29, 1992).	NRS 459.485, 459.490, 459.520 and 459.525; NAC 444.8632.
Administrative Stay for the Requirement that Existing Drip Pads be Impermeable (57 FR 5859, February 18, 1992).	NRS 459.485, 459.490 and 459.525; NAC 444.8632.
Second Correction to the Third Land Disposal Restrictions (57 FR 8086, March 6, 1992, as amended at 58 FR 14317, March 17, 1993).	NRS 459.485 and 459.490; NAC 444.8632.
Hazardous Debris Case-by-Case Capacity Variance (57 FR 20766, May 15, 1992).	NRS 459.485 and 459.490; NAC 444.8632.
Oil Filter Exclusion (57 FR 21524, May 20, 1992)	NRS 459.485 and 459.490; NAC 444.8632.
Recycled Coke By-Product Exclusion (57 FR 27880, June 22, 1992)	NRS 459.485, 459.490 and 459.525; NAC 444.8632.
Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance (57 FR 28628, June 26, 1992).	NRS 459.485 and 459.490; NAC 444.8632.
Used Oil Exclusion; Technical Corrections (57 FR 29220, July 1, 1992).	NRS 459.485 and 459.490; NAC 444.8632.
Toxicity Characteristics Revisions; Technical Corrections (57 FR 30657, July 10, 1992).	NRS 459.485 and 459.490; NAC 444.8632.
Land Disposal Restrictions for Newly Listed Waste and Hazardous Debris (57 FR 37194, August 18, 1992, as amended at 57 FR 41173, September 9, 1992).	NRS 459.485 and 459.490; NAC 444.8632.
Coke By-Products Listings (57 FR 37284, August 18, 1992)	NRS 459.485 and 459.490; NAC 444.8632.
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment III (57 FR 38558, August 25, 1992).	NRS 459.485, 459.490 and 459.525; NAC 444.8632.
Recycled Used Oil Management Standards (57 FR 41566, September 10, 1992).	NRS 459.485 and 459.490; NAC 444.8632.
Financial Responsibility for Third-Party Liability, Closure, and Post-Closure (57 FR 42832, September 16, 1992).	NRS 459.485, 459.490 and 459.525; NAC 444.8632.
Liability Requirements; Technical Amendment (56 FR 30200, July 1, 1991).	NRS 459.485, 459.490 and 459.525; NAC 444.8632.
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment IV (57 FR 44999, September 30, 1992).	NRS 459.485, 459.490 and 459.525; NAC 444.8632.
Chlorinated Toluene Production Waste Listing (57 FR 47376, October 15, 1992).	NRS 459.485 and 459.490; NAC 444.8632.
Hazardous Soil Case-by-Case Capacity Variance (57 FR 47772, October 20, 1992).	NRS 459.485 and 459.490; NAC 444.8632.
"Mixture" and "Derived-From" Rules (57 FR 7628, March 3, 1992; as amended June 1, 1992 at 57 FR 23062, and October 30, 1992 at 57 FR 49278).	NRS 459.485 and 459.490; NAC 444.8632.
Toxicity Characteristic Amendment (57 FR 23062, June 1, 1992)	NRS 459.485 and 459.490; NAC 444.8632.
Liquids in Landfills II (57 FR 54452, November 18, 1992)	NRS 459.485, 459.490 and 459.525; NAC 444.8632.
Toxicity Characteristic Revision; TCLP Correction (57 FR 55114, November 24, 1992, as amended February 2, 1993 at 58 FR 6854).	NRS 459.485 and 459.490; NAC 444.8632.
Wood Preserving; Revisions to Listings and Technical Requirements (57 FR 61492, December 24, 1992).	NRS 459.485, 459.490 and 459.525; NAC 444.8632.
Corrective Action Management Units and Temporary Units (58 FR 8658, February 16, 1993).	NRS 459.485, 459.490 and 459.525; NAC 444.8632.
Recycled Used Oil Management Standards; Technical Amendments and Corrections (58 FR 26420, May 3, 1993, as amended June 17, 1993 at 58 FR 33341).	NRS 459.485 and 459.490; NAC 444.8632.
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance (58 FR 28506, May 14, 1993).	NRS 459.485 and 459.490; NAC 444.8632.
Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes whose Treatment Standards were Vacated (58 FR 29860, May 24, 1993).	NRS 459.485 and 459.490; NAC 444.8632.

Note: NRS 459.485 effective 1981, amended 1991; NRS 459.490 effective 1981, amended 1987; NRS 459.500 effective 1981, amended 1985, 1987, and 1989; NRS 459.420 effective 1981, amended 1985 and 1987; NRS 459.525 effective 1981, amended 1987; and NAC 444.8632 effective 1987, amended 1990, 1992, 1993, and 1994. NAC 444.8632

adopts by reference 40 CFR parts 2, subpart A; 124, subparts A and B; 260 through 270, inclusive; and 279 as modified by NAC 444.8633, NAC 444.8634, and Regulation #R173-93 (effective March 1 1994).

Nevada agrees to review all State hazardous waste permits that have been issued under State law prior to the

effective date of this authorization. Nevada agrees to then modify or revoke and reissue such permits as necessary to require compliance with the revised State program. The modifications or revocation and reissuance will be scheduled in the annual State Grant Work Plan.

Nevada is not being authorized to operate any portion of the hazardous waste program on Indian lands.

C. Decision

I conclude that Nevada's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Nevada is granted final authorization to operate its hazardous waste program as revised.

Nevada is now responsible for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program applications, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984) ("HSWA"). Nevada also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Nevada's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice 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, and 6974(b).

Dated: May 16, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94-12902 Filed 5-26-94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 721

[OPPTS-50615; FRL-4746-6]

RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for certain chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

DATES: The effective date of this rule is July 26, 1994. This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on June 10, 1994. If EPA receives notice before June 27, 1994 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the substance for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPPTS-50615 and the name(s) of the chemical substance(s) subject to the comment. All comments should be sent in triplicate to: U.S. Environmental Protection Agency, ATTN: OPPT Document Receipt Office (7407), 401 M St., SW., Rm. E-G099, Washington, DC 20460. All comments which are claimed confidential must be clearly marked as such. Three additional sanitized copies

of any comments containing confidential business information (CBI) must also be submitted. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing or processing a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs published in the Federal Register of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR

part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the Federal Register its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 12.128. Such persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order or as a non-section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII of this preamble.

Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI of this preamble, the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice (SNUN) at least 90 days in advance. In addition,

this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes.

Data on potential exposures or releases of the substances, testing other than that specified in the section 5(e) order for the substances, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. Persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs, as stated in 40 CFR 721.1(c), including submission of test data on health and environmental effects as described in 40 CFR 720.50.

EPA is not publishing SNURs for 14 PMN substances: P-93-67, P-93-68, P-93-184, P-93-185, P-93-186, P-93-187, P-93-188, P-93-190, P-93-282, P-93-317, P-93-318, P-93-476, P-93-721, and P-93-959 which are subject to a final 5(e) consent order. The 5(e) consent orders for these substances are derived from an exposure finding based solely on substantial production volume and significant or substantial human exposure and/or release to the environment of substantial quantities. For these cases there were limited or no toxicity data available for the PMN substances. In such cases, EPA regulates the new chemical substances under section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects. However, for these substances the short-term toxicity testing required by the 5(e) order is usually completed within 1 to 2 years of notice of commencement. EPA's experience with exposure-based SNURs requiring short-term testing is that the SNUR is often revoked within 1 to 2 years when the test results are received. Rather than issue and revoke SNURs in such a short span of time, EPA will defer publication of exposure-based SNURs until either a Notice of Commencement (NOC) or data demonstrating risk are received unless the toxicity testing required is long-term. EPA is issuing this explanation and notification as required in 40 CFR 721.160(a)(2) as it has determined that

SNURs are not needed at this time for these substances which are subject to a final 5(e) consent order under TSCA.

The section 5(e) orders for P-92-776, P-92-777, and P-93-214 contain new chemical exposure limits (NCEL) provisions. In each case, the section 5(e) order allows the PMN submitter and the submitter's customers to protect workers by controlling and monitoring airborne concentrations of the substance present in the workplace as an alternative to certain respirator requirements.

A clause had been added to these SNURs stating that as an alternative to the respiratory protection designated in the SNUR, manufacturers, importers, and processors may follow the same NCEL provisions found in the section 5(e) consent orders for these substances, including using only EPA-approved sampling and analytical methods if approval is stipulated by the 5(e) consent order. No general NCEL language has been added to the regulatory text of the corresponding SNURs as EPA expects that only manufacturers, importers, and processors with access to the original 5(e) consent order of the original PMN submitter will be able to readily use this clause. EPA recommends that any company proposing to substitute NCEL or other alternative control measures for SNUR provisions consult EPA either by submitting a SNUN or requesting a determination of equivalency under the procedures for "EPA Approval of Alternative Control Measures" in § 721.30.

PMN Number P-88-1304

Chemical name: (generic) Polypiperidinol-acrylate methacrylate.
CAS number: Not available.
Effective date of section 5(e) consent order: January 1, 1989.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar chemicals have been shown to cause immunotoxicity, reproductive toxicity, and chronic toxicity. The PMN substance has demonstrated acute toxicity and internal organ effects in toxicity studies.
Recommended testing: A 90-day oral subchronic toxicity study in rats (40 CFR 798.2650) is recommended to address the potential health concerns. The PMN submitter has agreed not to exceed the production volume limit without performing the 90-day subchronic study.
CFR citation: 40 CFR 721.4794.

PMN Numbers P-88-1937 and P-88-1938

Chemical name: (generic) Substituted 2-nitro- and 2-aminobenzenesulfonamide.

CAS number: Not available.

Effective date of section 5(e) consent order: September 15, 1993.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to the environment.

Toxicity concern: Similar chemicals have been shown to cause aquatic and terrestrial toxicity in test species. Based on this data, EPA expects toxicity to aquatic organisms to occur at concentrations of 100 ppb (parts per billion) for P-88-1937 and 10 ppb for P-88-1938 in surface waters. EPA has determined that certain uses of the PMN substances could result in releases to surface waters where the concentration would be greater than 100 ppb for P-88-1937 and greater than 10 ppb for P-88-1938.

Recommended testing: To help characterize the terrestrial effects, the following studies are recommended: Inherent biodegradation in soil (40 CFR 796.3400), earthworm toxicity test (§ 795.150, proposed June 26, 1991 (56 FR 29155)), early seedling growth test (40 CFR 797.2800), soil microbial community test (40 CFR 797.3700), and aerobic biodegradation test (aquatic) (40 CFR 796.3100). To help characterize the aquatic toxicity effects, the following studies are recommended: Acute algal (40 CFR 797.1050) (static/nominal conditions), acute daphnia (40 CFR 797.1300) (flow-through/measured conditions), and acute fish (40 CFR 797.1400) (flow-through/measured conditions).

CFR citation: 40 CFR 721.1612.

PMN Number P-91-659

Chemical name: (generic) 2-Chloro-4,6-bis(substituted)-1,3,5-triazine, dihydrochloride.

CAS number: Not available.

Effective date of section 5(e) consent order: July 20, 1993.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to environment.

Toxicity concern: Similar chemicals have been shown to cause aquatic and terrestrial toxicity in test species. Based on this data, EPA expects toxicity to aquatic organisms to occur at a concentration of 10 ppb of the PMN substance in surface waters. EPA has

determined that certain uses of the PMN substance could result in releases to surface waters where the concentration of the PMN substance would be greater than 10 ppb.

Recommended testing: To help characterize the terrestrial effects, the following studies are recommended: Early life seedling growth toxicity study (40 CFR 797.2800), inherent biodegradation in soil (40 CFR 796.3400), earthworm subchronic toxicity study (§ 795.150, proposed June 26, 1991 (56 FR 29155)), soil microbial community toxicity study (40 CFR 797.3700), and plant life cycle growth test (40 CFR 797.2830). To help characterize the aquatic toxicity effects, the following studies are recommended: Acute algal study (40 CFR 797.1050), acute daphnia study (40 CFR 797.1300), and acute fish study (40 CFR 797.1400). **CFR citation:** 40 CFR 721.9750.

PMN Number P-91-689

Chemical name: (generic) Trisubstituted anthracene.

CAS number: Not available.

Effective date of section 5(e) consent order: October 6, 1993.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment. **Toxicity concern:** Laboratory animal test data on chemicals similar in structure to the PMN substance indicate that the PMN substance may cause carcinogenicity in humans. Similar substances have also been shown to cause toxicity in aquatic organisms. Specifically, based on quantitative structural activity relationships on similar neutral organic compounds, EPA predicts acute toxicity to aquatic organisms could occur at 2 ppb in surface waters.

Recommended testing: EPA has determined that a *Salmonella typhimurium* reverse mutation assay (Ames test) (40 CFR 798.5625) and a 7,12-dimethylbenz[*a*]anthracene-12-*O*-tetradecanoylphorbol-13-acetate tumor promoter test may help characterize the carcinogenic effects of the PMN substance. The PMN submitter has agreed not to exceed specified production limits without performing these tests. However, the results of each preceding study will be used by EPA to determine if the next study may not be required. EPA believes that an oncogenicity test (two-species, dermal) (40 CFR 798.3300) would help characterize the human health effects and the following aquatic toxicity tests would help characterize the

environmental effects of the PMN substance: A 96-h bioassay in algae (40 CFR 797.1050), a 48-h LC50 test in *Daphnia* (40 CFR 797.1300), and a 96-h LC50 test in fish (40 CFR 797.1400). **CFR citation:** 40 CFR 721.715.

PMN Numbers P-92-776 and P-92-777

Chemical name: (generic) Carboxylic acid glycidyl esters.

CAS number: Not available.

Effective date of section 5(e) consent order: June 25, 1993.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to health and the environment.

Toxicity concern: Similar chemicals have been shown to cause carcinogenicity, mutagenicity, and developmental and reproductive toxicities in test animals. Test data on P-92-777 indicate the potential for eye corrosion and lung damage. Similar chemicals have also been shown to cause toxic effects in aquatic organisms. **Recommended testing:**

Test and PMN substance on which it is to be developed	Effects	Guideline
Human health-related tests		
90-day subchronic study (P-92-777).	Systemic. Cancer	40 CFR 798.2650
2-year, two-species rodent bioassay (P-92-777).		40 CFR 798.3300
Aquatic toxicity tests		
Algae (P-92-776 and P-92-777).	Aquatic toxicity.	40 CFR 797.1050
<i>Daphnia</i> (P-92-776 and P-92-777).	Aquatic toxicity.	40 CFR 797.1300
Fish (P-92-776 and P-92-777).	Aquatic toxicity.	40 CFR 797.1400

The PMN submitter has agreed not to exceed the production volume limit without performing the 90-day subchronic study. **CFR citation:** 40 CFR 721.2950.

PMN Number P-93-214

Chemical name: Calcium, bis(2,4-pentanedionato-*O,O'*).

CAS number: 19372-44-2.

Effective date of section 5(e) consent order: August 7, 1993.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on

a finding that this substance may present an unreasonable risk of injury to human health.

Toxicity concern: Test data on structurally similar chemical substances have been shown to cause developmental toxicity and neurotoxicity in test animals.

Recommended testing: The Agency has determined that the results of the following toxicity testing and exposure monitoring would help characterize possible human health risks caused by the manufacture, import, processing, and use of the PMN substance: A 28-day inhalation study in rats (OECD guideline 407) modified to include a functional observation battery and neuropathology (NTIS: PB 91-1546170), and workplace airborne monitoring (NIOSH Analytical Methods nos. 0500 and 0600, total nuisance dust and respirable nuisance dust, respectively). **CFR citation:** 40 CFR 721.982.

PMN Number P-93-333

Chemical name: (generic) Lecithins, phospholipase A2-hydrolyzed.

CAS number: Not available.

Effective date of section 5(e) consent order: July 9, 1993.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to the environment.

Toxicity concern: Test data on structurally similar chemical substances indicate that the PMN substances may cause toxicity to aquatic organisms. Based on this data, EPA expects toxicity to aquatic organisms to occur at a concentration of 10 ppb of the PMN substances in surface waters. EPA has determined that certain uses of the PMN substances could result in releases to surface waters where the concentration of the PMN substances would be greater than 10 ppb.

Recommended testing: The Agency has determined that the results of the following acute aquatic toxicity testing would help characterize possible environmental effects of the substances: Algal (40 CFR 797.1050), daphnid (40 CFR 797.1300), fish (40 CFR 797.1400), and fish acute toxicity mitigated by humic acid (40 CFR 850.1085). All tests should be conducted with static conditions and nominal concentrations. The PMN submitter has agreed not to exceed the production volume limit without performing these tests. **CFR citation:** 40 CFR 721.4585.

PMN Number P-93-364

Chemical name: (generic) Polyepoxy polyol.

CAS number: Not available.

Basis for action: The PMN substance will be used as a coating. Based on analogy to epoxides, the PMN substance may cause cancer and reproductive effects. EPA has determined that workers exposed by inhalation may be at risk for these toxic effects. EPA has determined that use of the substance as a granule as described in the PMN did not present an unreasonable risk because significant inhalation exposure will not occur. EPA has determined that use in a powder form may result in significant inhalation exposures. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).

Recommended testing: EPA has determined that a 90-day oral subchronic study with special attention to the testes (40 CFR 798.2650) will help characterize the health effects of the PMN substance.

CFR citation: 40 CFR 721.7710.

PMN Number P-93-699

Chemical name: (generic) Substituted benzenedicarboxylic acid ester.

CAS number: Not available.

Effective date of section 5(e) consent order: September 21, 1993.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.

Toxicity concern: Similar chemicals have been shown to cause cancer in test animals and ecotoxicity effects in aquatic organisms.

Recommended testing: EPA has determined that the results of a 2-year rodent bioassay (40 CFR 798.33) would help characterize the potential carcinogenic effects of the PMN substance. In addition, to characterize the potential aquatic toxicity effects, EPA has determined that an acute algal study (40 CFR 797.1050), an acute daphnid study (40 CFR 797.1300), and an acute fish study (40 CFR 797.1400) would be helpful. Human health toxicity data on representative members of the acrylate/methacrylate class of chemical substances being developed by certain acrylate and methacrylate manufacturers may also be useful in evaluating the risk posed by the PMN substance.

CFR citation: 40 CFR 721.2930.

PMN Number P-93-1047

Chemical name: Benzenesulfonic acid, 4-methyl-, reaction products with oxirane mono[(C₁₀₋₁₆-alkyloxy)methyl] derivatives and 2,2,4-(or 2,4,4)-trimethyl-1,6-hexanediamine.

CAS number: 147170-38-5.

Basis for action: The PMN substance will be used as a coatings component. Based on analogy of the substance to neutral organic substances, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(iii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.1645.

PMN Number P-93-1119

Chemical name: (generic) Organotin lithium compound.

CAS number: Not available.

Toxicity concern: The substance will be used as a catalyst. Test data on organotin pesticides indicate that the substance may cause toxicity to aquatic organisms. Based on these data, EPA expects toxicity to aquatic organisms to occur at a concentration of 1 ppb of the substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that manufacture, processing, and use of the substance for uses other than as a catalyst could result in releases to surface waters. Based on this information, the substance meets the concern criteria at § 721.170(b)(4)(iii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.9668.

PMN Number P-93-1166

Chemical name: (generic)

Alkylsulfonium salt.

CAS number: Not available.

Basis for action: The PMN substance will be used as an intermediate. Based on analogy to dialkyl cationic

quaternary nitrogen surfactants, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 50 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters resulting in concentrations above 50 ppb. EPA has determined that other uses of the substance may result in releases to surface water at concentrations above 50 ppb. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(iii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.7655.

PMN Number P-93-1183

Chemical name: (generic) Substituted quinoline.

CAS number: Not available.

Basis for action: The PMN substance will be used as an intermediate. Based on analogy of the substance to neutral organic substances, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 20 ppb of the PMN substance in surface waters. Based on analogy of the substance to other quinolines, EPA is concerned that developmental and reproductive toxicity may occur to exposed workers. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters and significant worker exposure would not occur because the substance was used in an enclosed process. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration and significant worker exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(iii) and (b)(3)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance. EPA has determined that a two-generation reproduction study (40 CFR 798.4700), and a developmental toxicity study (40 CFR 708.4900) would

help characterize the health effects of the PMN substance.

CFR citation: 40 CFR 721.9100.

PMN Numbers P-93-1193, 1194, 1195, 1196, 1203, and 1204

Chemical names:

(P-93-1193) 1,2-Ethanedio bis(4-methylbenzenesulfonate);
(P-93-1194) 2,2-Oxybisethane bis(4-methylbenzenesulfonate);
(P-93-1195) Ethanol, 2,2'-[oxybis(2,1-ethanedioxy)]bis-, bis(4-methylbenzenesulfonate);
(P-93-1196) Ethanol, 2,2'-[oxybis(2,1-ethanedioxy)] bis-, bis(4-methylbenzenesulfonate);
(P-93-1203) Ethanol, 2,2'-[[1-[(2-propenyloxy)methyl]-1,2-ethanedioyl]bis(oxy)]bis-, bis(4-methylbenzenesulfonate);
(P-93-1204) Ethanol, 2-[1-[[2-2-[[4-methylphenyl]sulfonyl]oxy]ethoxy]ethoxy]methyl]-2-(2-propenyloxy)ethoxy]-, 4-methylbenzenesulfonate.

CAS numbers:

(P-93-1193) 6315-52-2,
(P-93-1194) 7460-82-4,
(P-93-1195) 19249-03-7,
(P-93-1196) 37860-51-8,
(P-93-1203) 114719-15-2,
(P-93-1204) 124029-00-1.

Basis for action: The PMN substances will be used as intermediates. Based on analogy of the substances to ester compounds, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 80 ppb of P-93-1193, 1194, 1195, and 1196, and 60 ppb of P-93-1203 and 1204, in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that other uses of the substances may result in releases to surface waters. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(iii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.1630.

PMN Numbers P-93-1197, 1201, 1202, and 1205

Chemical names:

(P-93-1197) 3,6,9,12-Tetraoxatetradecane-1,14-diol, bis(4-methylbenzenesulfonate);

(P-93-1201) 3,6,9,13-Tetraoxahexadec-15-ene-1,11-diol, bis(4-methylbenzenesulfonate);
(P-93-1202) 3,6,9,12,16-Pentaoxanonadec-18-ene-1,14-diol, bis(4-methylbenzenesulfonate);
(P-93-1205) 3,6,9,12-Tetraoxatetradecane-1,14-diol, 7-[[2-propenyloxy] methyl]-, bis(4-methylbenzenesulfonate).

CAS number:

(P-93-1197) 41024-91-3,
(P-93-1201, 1202, and 1205) Not available.

Basis for action: The PMN substances will be used as intermediates. Based on analogy of the substances to ester compounds, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 80 ppb of P-93-1197, and 60 ppb of P-93-1201, 1202, and 1205, in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substances may result in releases to surface waters. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(iii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.1640.

PMN Numbers P-93-1198, 1199, and 1200

Chemical names:

(P-93-1198) 1,2-Propanediol, 3-[(2-propenyloxy)-, bis(4-methylbenzenesulfonate);
(P-93-1199) 2-Propanol, 1-[2-[[4-methylphenyl]sulfonyl]oxy]ethoxy]-3-(2-propenyloxy)-4-methylbenzenesulfonate;
(P-93-1200) 2-Propanol, 1-[2-[[4-methylphenyl]sulfonyl]oxy]ethoxy]ethoxy]-3-(2-propenyloxy)-, 4-methylbenzenesulfonate.

CAS numbers:

(P-93-1198) 114719-19-6,
(P-93-1199) 124213-39-4,
(P-93-1200) 124028-99-5.

Basis for action: The PMN substances will be used as intermediates. Based on analogy of the substances to ester compounds, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 60 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an

unreasonable risk because the substances would not be released to surface waters. EPA has determined that other uses of the substances may result in releases to surface waters. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(iii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.1637.

PMN Number P-93-1208

Chemical name: 1,4,7,10,13,16-Hexaoxacyclooctadecane, 2-[(2-propenyloxy) methyl].

CAS number: 84812-04-4.

Basis for action: The PMN substance will be used as an intermediate. Based on analogy of the substance to ester compounds, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 80 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(iii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.4255.

PMN Number P-93-1222

Chemical name: (generic) Phosphated polyarylphenol ethoxylate, potassium salt.

CAS number: Not available.

Basis for action: The PMN substance will be used as a dispersing agent. Based on analogy test data on the sulfate form of the substance, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 600 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters resulting at concentrations above 600 ppb. EPA has determined that other uses of the

substance may result in releases to surface water at concentrations above 600 ppb. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(iii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.5970.

PMN Number P-93-1235

Chemical name: 2-Propenoic acid 3-(trimethoxysilyl) propyl ester.

CAS number: Not available.

Basis for action: The PMN substance will be used as an intermediate. Based on analogy to acrylates, the PMN substance may cause cancer and may cause toxicity to aquatic organisms in surface waters at concentrations as low as 60 ppb. EPA has determined that persons exposed dermally to the PMN substance may be at risk for cancer. EPA determined that use of the substance as an intermediate did not present an unreasonable risk because there were no significant dermal exposures or environmental releases. EPA has determined that use of the substance other than as an intermediate may result in significant dermal or environmental exposures. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(4)(iii).

Recommended testing: EPA has determined that a 2-year two-species oral bioassay (40 CFR 798.3300) would help characterize the health effects of the PMN substance and a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.8654.

PMN Number P-93-1381

Chemical name: (generic) Aliphatic ether.

CAS number: Not available.

Basis for action: The PMN substance will be used as an intermediate. Based on analogy of the substance to neutral organic substances, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 400 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has

determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(iii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.3364.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for 10 of the substances regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitters; the SNUR provisions for these substances designated herein are consistent with the provisions of the section 5(e) orders.

In the other 22 cases for which the proposed uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that: EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; when necessary to prevent unreasonable risks EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements. Issuance of a SNUR for a chemical substance does not signify that the substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for

ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Direct Final Procedure

EPA is issuing these SNURs as direct final rules, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective July 26, 1994, unless EPA receives a written notice by June 27, 1994 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30-day comment period.

This action establishes SNURs for a number of chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order requires or recommends certain testing, Unit III. of this preamble lists those recommended tests.

However, EPA has established production limits in the section 5(e) orders for several of the substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the section 5(e) orders are included in Unit III. of this preamble. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests. SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

- (1) Human exposure and environmental release that may result from the significant new use of the chemical substances.
- (2) Potential benefits of the substances.
- (3) Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.1725(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be

a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. Section 5(e) orders have been issued for 10 substances and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received an NOC and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 14 of the 32 substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing.

As discussed in the Federal Register of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section

5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUN requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUN requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPPTS-50615).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS-50615). The record includes information considered by EPA in developing this rule. A public version of the record without any confidential business information is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located at Rm. E-G099, 401 M St., SW., Washington, DC 20460.

XI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of

Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has determined that approximately 10 percent of the parties affected by this rule could be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act.

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2131),

U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070-0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: May 6, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.715 to subpart E to read as follows:

§ 721.715 Trisubstituted anthracene.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as trisubstituted anthracene (PMN P-91-689) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set 0.1 percent), (f), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (First limit set at 500 kg; second limit set at 25,000 kg).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 10 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

3. By adding new § 721.982 to subpart E to read as follows:

§ 721.982 Calcium, bis(2,4-pentanedionato-O,O')

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance calcium, bis(2,4-pentanedionato-O,O') (PMN P-93-214, CAS no. 19372-44-2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply if the substance is embedded or encapsulated in a plastic matrix.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 1.0 percent); and (c). As an alternative to the respiratory requirements in this section, manufacturers, importers, and processors may use the New Chemical Exposure Limits provisions, including sampling and analytical methods which have previously been approved by EPA for this substance, found in the 5(e) consent order for this substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iii), (g)(1)(ix), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d), (f) through (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

4. By adding new § 721.1612 to subpart E to read as follows:

§ 721.1612 Substituted 2-nitro- and 2-aminobenzenesulfonamide.

(a) *Chemical substances and significant new uses subject to reporting.*

(1) The chemical substances identified generically as substituted 2-nitro- and 2-aminobenzenesulfonamide (PMNs P-88-1937 and P-88-1938) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.*

Requirements as specified in § 721.72 (a) through (d), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5). The following additional statements shall appear on each label and MSDS required by this paragraph: This substance may be toxic to terrestrial organisms and plants. Notice to user: Release to water restrictions apply.

(ii) *Disposal.* Requirements as specified in § 721.85. A significant new use of these substances is any release of the substances to land.

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (where N = 100 ppb for P-88-1937 and N = 10 ppb for P-88-1938). When calculating the surface water concentrations according to the instructions in § 721.91(a)(4), the statement that the amount of the substances that will be released will be calculated before the substances enter control technology does not apply. Instead, if the waste stream containing the PMN substances will be treated before release, the amount of the PMN substances reasonably likely to be removed from the waste stream by treatment may be subtracted in calculating the number of kilograms released. No more than 50 percent removal efficiency may be attributed to such treatment.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), (j), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

5. By adding new § 721.1630 to subpart E to read as follows:

§ 721.1630 1,2-Ethandiol bis(4-methylbenzenesulfonate); 2,2-oxybis-ethane bis(4-methylbenzenesulfonate); ethanol, 2,2'-[oxybis(2,1-ethanediyl oxy)]bis-, bis(4-methylbenzenesulfonate); ethanol, 2,2'-[oxybis(2,1-ethane diyl oxy)] bis-, bis(4-methylbenzenesulfonate); ethanol, 2,2'-[[1-[(2-propenyloxy) methyl]-1,2-ethanediyl] bis(oxy)]bis-, bis(4-methylbenzenesulfonate); and ethanol, 2-[1-[[2-[[2-[[4-methylphenyl)sulfonyl]oxy]ethoxy]methyl]-2-(2-propenyloxy)ethoxy]-, 4-methylbenzenesulfonate.

(a) *Chemical substances and significant new uses subject to reporting.*

(1) The chemical substances 1,2-

ethandiol bis(4-methylbenzenesulfonate) (PMN P-93-1193, CAS no. 6315-52-2), 2,2-oxybis-ethane bis(4-methylbenzenesulfonate) (PMN P-93-1194, CAS no. 7460-82-4), ethanol, 2,2'-[oxybis(2,1-ethanediyl oxy)]bis-, bis(4-methylbenzenesulfonate) (PMN P-93-1195, CAS no. 19249-03-7), ethanol, 2,2'-[oxybis(2,1-ethanediyl oxy)] bis-, bis(4-methylbenzenesulfonate) (PMN P-93-1196, CAS no. 37860-51-8), ethanol, 2,2'-[[1-[(2-propenyloxy) methyl]-1,2-ethanediyl]bis(oxy)]bis-, bis(4-methylbenzenesulfonate) (PMN P-93-1203, CAS no. 114749-15-2), and ethanol, 2-[1-[[2-[[2-[[4-methylphenyl)sulfonyl]oxy]ethoxy]ethoxy]methyl]-2-(2-propenyloxy)ethoxy]-, 4-methylbenzenesulfonate (PMN P-93-1204, CAS no. 124029-00-1) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

6. By adding new § 721.1637 to subpart E to read as follows:

§ 721.1637 1,2-Propanediol, 3-(2-propenyloxy)-, bis(4-methylbenzenesulfonate); 2-propanol, 1-[2-[[4-methylphenyl)sulfonyl]oxy]ethoxy]-3-(2-propenyloxy)-4-methylbenzenesulfonate; and 2-propanol, 1-[2-[[2-[[4-methylphenyl)sulfonyl]oxy]ethoxy]ethoxy]-3-(2-propenyloxy)-, 4-methylbenzenesulfonate.

(a) *Chemical substances and significant new uses subject to reporting.*

(1) The chemical substances 1,2-propanediol, 3-(2-propenyloxy)-, bis(4-methylbenzenesulfonate) (PMN P-93-1198, CAS no. 114719-19-6), 2-propanol, 1-[2-[[4-methylphenyl)sulfonyl]oxy]ethoxy]-3-(2-propenyloxy)-4-methylbenzenesulfonate (PMN P-93-1199, CAS no. 124213-39-4), and 2-propanol, 1-[2-[[2-[[4-methylphenyl)sulfonyl]oxy]ethoxy]ethoxy]-3-(2-propenyloxy)-, 4-methylbenzenesulfonate (PMN P-93-1200, CAS no. 124028-99-5) are subject

to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

7. By adding new § 721.1640 to subpart E to read as follows:

§ 721.1640 3,6,9,12-Tetraoxatetradecane-1,14-diol, bis(4-methylbenzenesulfonate); 3,6,9,13-tetraoxahexadec-15-ene-1,11-diol, bis(4-methylbenzenesulfonate); 3,6,9,12,16-pentaoxanonadec-18-ene-1,14-diol, bis(4-methyl benzenesulfonate); and 3,6,9,12-tetraoxatetradecane-1,14-diol, 7-[(2-propenyloxy)methyl]-, bis(4-methylbenzenesulfonate).

(a) *Chemical substances and significant new uses subject to reporting.*

(1) The chemical substances 3,6,9,12-tetraoxatetradecane-1,14-diol, bis(4-methylbenzenesulfonate) (PMN P-93-1197, CAS no. 41024-91-3), 3,6,9,13-tetraoxahexadec-15-ene-1,11-diol, bis(4-methylbenzenesulfonate) (PMN P-93-1201), 3,6,9,12,16-pentaoxanonadec-18-ene-1,14-diol, bis(4-methyl benzenesulfonate) (PMN P-93-1202), and 3,6,9,12-tetraoxatetradecane-1,14-diol, 7-[(2-propenyloxy)methyl]-, bis(4-methylbenzenesulfonate) (PMN P-93-1205) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

8. By adding new § 721.1645 to subpart E to read as follows:

§ 721.1645 Benzenesulfonic acid, 4-methyl-, reaction products with oxirane mono[(C₁₀₋₁₆-alkyloxy)methyl] derivatives and 2,2,4(or 2,4,4)-trimethyl-1,6-hexanediamine.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance benzenesulfonic acid, 4-methyl-, reaction products with oxirane mono[(C₁₀₋₁₆-alkyloxy)methyl] derivatives and 2,2,4(or 2,4,4)-trimethyl-1,6-hexanediamine (PMN P-93-1047, CAS no. 147170-38-5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

9. By adding new § 721.2930 to subpart E to read as follows:

§ 721.2930 Substituted benzenedicarboxylic acid ester.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as substituted benzenedicarboxylic acid ester (PMN P-93-699) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

10. By adding new § 721.2950 to subpart E to read as follows:

§ 721.2950 Carboxylic acid glycidyl esters.

(a) *Chemical substances and significant new uses subject to reporting.*

(1) The chemical substance identified generically as carboxylic acid glycidyl ester (PMN P-92-776) is subject to reporting under this section for the significant new uses described in this paragraph.

(i) The significant new uses are:

(A) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c). As an alternative to the respiratory requirements in this section, manufacturers, importers, and processors may use the New Chemical Exposure Limits provisions, including sampling and analytical methods which have previously been approved by EPA for this substance, found in the 5(e) consent order for this substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(vi), (g)(1)(vii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(C) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(D) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(C) *Determining whether a specific use is subject to this section.* The

provisions of § 721.1725(b)(1) apply to this section.

(2) The chemical substance identified as carboxylic acid glycidyl ester (PMN P-92-777) is subject to reporting under this section for the significant new uses described in this paragraph.

(i) The significant new uses are:

(A) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i) (§ 721.63(a)(5)(i) applies only during processing operations), (a)(5)(ii), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c). As an alternative to the respiratory requirements in this section, manufacturers, importers, and processors may use the New Chemical Exposure Limits provisions, including sampling and analytical methods which have previously been approved by EPA for this substance, found in the 5(e) consent order for this substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(vi), (g)(1)(vii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(C) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(D) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(C) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

(b) [Reserved]

11. By adding new § 721.3364 to subpart E to read as follows:

§ 721.3364 Aliphatic ether.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as an aliphatic ether (PMN P-93-1381) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

12. By adding new § 721.4255 to subpart E to read as follows:

§ 721.4255 1,4,7,10,13,16-Hexaoxacyclooctadecane, 2-[(2-propenyl oxy)methyl]-.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance 1,4,7,10,13,16-hexaoxacyclooctadecane, 2-[(2-propenyloxy)methyl]- (PMN P-93-1208, CAS no. 84812-04-4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

13. By adding new § 721.4585 to subpart E to read as follows:

§ 721.4585 Lecithins, phospholipase A2-hydrolyzed.

(a) *Chemical substances and significant new uses subject to reporting.*

(1) The chemical substances identified generically as lecithins, phospholipase A2-hydrolyzed (PMN P-93-333) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(i), and (g)(3)(ii).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 10 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

14. By adding new § 721.4794 to subpart E to read as follows:

§ 721.4794 Polypiperidinol-acrylate methacrylate.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as polypiperidinol-acrylate methacrylate (PMN P-88-1304) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(6)(i), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e)

(concentration set 1.0 percent), (f), (g)(1)(vi), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v). The following additional statement shall appear on each label and MSDS required by this paragraph: This substance may cause acute and chronic toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

15. By adding new § 721.5970 to subpart E to read as follows:

§ 721.5970 Phosphated polyarylether ethoxylate, potassium salt.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as phosphated polyarylether ethoxylate, potassium salt (PMN P-93-1222) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 600 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

16. By adding new § 721.7655 to subpart E to read as follows:

§ 721.7655 Alkylsulfonium salt.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkylsulfonium salt (PMN P-93-1166) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 50 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

17. By adding new § 721.7710 to subpart E to read as follows:

§ 721.7710 Polyepoxy polyol.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified

generically as a polyepoxy polyol (PMN P-93-364) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

18. By adding new § 721.8654 to subpart E to read as follows:

§ 721.8654 2-Propenoic acid 3-(trimethoxysilyl)propyl ester.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance 2-propenoic acid 3-(trimethoxysilyl)propyl ester (PMN P-93-1235) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

19. By adding new § 721.9100 to subpart E to read as follows:

§ 721.9100 Substituted quinoline.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as substituted quinoline (PMN P-93-1183) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(c).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

20. By adding new § 721.9668 to subpart E to read as follows:

§ 721.9668 Organotin lithium compound.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as organotin lithium compound (PMN P-93-1119) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

21. By adding new § 721.9750 to subpart E to read as follows:

§ 721.9750 2-Chloro-4,6-bis(substituted)-1,3,5-triazine, dihydrochloride.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as 2-chloro-4,6-bis(substituted)-1,3,5-triazine, dihydrochloride (PMN P-91-659) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5). The following additional statements shall

appear on each label and MSDS required by this paragraph: This substance may be toxic to terrestrial organisms and plants. Notice to users: Release to water restrictions apply.

(ii) *Disposal*. Requirements as specified in § 721.85. A significant new use of this substance is any release of this substance to land.

(iii) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 10 ppb).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), (j), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-37

[FPMR Amendment G-107]

Government Aviation Administration and Coordination

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation implements the guidance and direction of OMB Circular A-126, May 22, 1992, pertaining to aviation safety programs within Federal agencies. This action is necessary to establish the requirement for aviation safety programs within all Federal aviation operations. Implementation of this regulation will improve safety awareness and management in the use of Government aviation resources.

EFFECTIVE DATE: May 27, 1994.

FOR FURTHER INFORMATION CONTACT: Larry Godwin, Aircraft Management Division (703-305-6399).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant rule for the purposes of Executive Order 12866.

REGULATORY FLEXIBILITY ACT: This final rule is not required to be published in the Federal Register for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 101-37

Aircraft, Air transportation, Aviation, Government property management.

For the reasons set forth in the preamble, 41 CFR part 101-37 is amended as follows:

PART 101-37—GOVERNMENT AVIATION ADMINISTRATION AND COORDINATION

1. The authority citation for part 101-37 continues to read as follows:

Authority: 31 U.S.C. 1344; Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Subpart 101-37.12 is added to read as follows:

SUBPART 101-37.12—FEDERAL AGENCY AVIATION SAFETY PROGRAM

§ 101-37.1200 General.

(a) This subpart sets forth guidance to agencies for establishing aviation safety programs in accordance with the direction given to GSA in OMB Circular A-126, but the subpart is not binding on other agencies.

(b) The aviation safety program objective is the safe accomplishment of the agency mission, and is a direct result of effective management which should include attention to detail sufficient to preclude the occurrence of an accident. Each agency should establish appropriate key management positions and define their responsibilities and qualifications. Agencies should ensure these positions are staffed with properly qualified personnel.

§ 101-37.1201 Applicability.

As prescribed in this subpart 101-37.12, the requirement to develop and operate an aviation safety program which addresses all program facets including, but not limited to, flight, ground, and weapons environments, is applicable to all Federal aviation programs.

§ 101-37.1202 Agency aviation safety responsibilities.

Agencies operating aviation programs are responsible for establishing and conducting a comprehensive aviation safety program. Agencies should appoint qualified aviation safety managers at both the national and operational program level.

§ 101-37.1203 Aviation safety manager qualifications.

(a) Aviation safety manager positions may be full time or additional duty, based on program mission requirements. In general, an aviation safety manager should, regardless of management level:

(1) Be knowledgeable in agency aviation program activities within his/her purview;

(2) Have experience as a pilot, crew member, or in aviation operations management; and

(3) Be a graduate of a recognized aviation safety officer or accident prevention course, or qualified within 1 year through attendance at formal courses(s) of instruction.

(b) These standards should be used as a guide to ensure that qualified personnel are selected as safety managers. However, they do not supersede those job classifications prescribed by the Office of Personnel Management or other appropriate authority.

§ 101-37.1204 Program responsibilities.

Agencies will ensure that policies, objectives, and standards are established and clearly defined to support an effective aviation accident prevention effort. The aviation safety manager should develop and implement an agency aviation safety program which integrates agency safety policy into aviation related activities.

§ 101-37.1205 Program elements.

As a recommendation, aviation safety program elements should include, but not be limited to, the following:

- (a) Aviation safety council;
- (b) Inspections and evaluations;
- (c) Hazard reporting;
- (d) Aircraft accident and incident investigation;
- (e) Education and training;
- (f) Aviation protective equipment;
- (g) Aviation qualification and certification; and
- (h) Awards program.

§ 101-37.1206 Aviation safety council.

(a) Each agency should establish aviation safety councils at the appropriate aircraft operations level. The purpose of the council is to promote safety by exchanging ideas, reviewing, and discussing hazard reports and accident and incident reports, and assessing the threat to safe operation inherent in mission operations plans. The council should function to recommend changes to agency policies, rules, regulations, procedures, and operations based upon such discussions, reviews, and assessments. The council should meet regularly and should consist, at a minimum, of those individuals within the organization responsible for the following areas:

- (1) Operations/mission planning;
- (2) Safety;
- (3) Aircrew training;