

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

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 *May 11, 2009*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

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

Dated: January 15, 2009.

#### Wayne Nastri,

*Regional Administrator, Region IX.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart F—California

■ 2. Section 52.220 is amended by revising paragraph (c)(339) introductory text and by adding paragraph (c)(339)(ii) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(339) New and amended plans were submitted on January 9, 2004, by the Governor's designee.

\* \* \* \* \*

(ii) Additional material.

(A) The following portions of the Final 2003 State and Federal Strategy (2003 State Strategy) for the California State Implementation Plan, adopted by the California Air Resources Board (ARB) on October 23, 2003:

(1) State agency commitments with respect to the following near-term defined measures for the South Coast Air Basin: LT/MED-DUTY-1 [Air Resources Board (ARB)], LT/MED-DUTY-2 (Bureau of Automotive Repair), ON-RD HVY-DUTY-1 (ARB), ON-RD HVY-DUTY-3 (ARB), OFF-RD CI-1 (ARB), OFF-RD LSI-1 (ARB), OFF-RD LSI-2 (ARB), SMALL OFF-RD-1 (ARB), SMALL OFF-RD-2 (ARB), MARINE-1 (ARB), MARINE-2 (ARB), FUEL-2 (ARB), CONS-1 (ARB), CONS-2 (ARB),

FVR-1 (ARB), FVR-2 (ARB), and PEST-1 (Department of Pesticide Regulation) in Resolution 03-22 Attachments A-2, A-3, A-4 and A-6 Table I-7 and in 2003 State Strategy Section I Appendix I-1 and Sections II and III.

(B) The following portions of the South Coast 2003 Air Quality Management Plan (AQMP), adopted by the South Coast Air Quality Management District (SCAQMD) on August 1, 2003 and adopted by the California Air Resources Board on October 23, 2003:

(1) Base year and future year baseline planning inventories (summer and winter) in AQMP Chapter III and Appendix III; SCAQMD commitment to adopt and implement control measures CTS-07, CTS-10, FUG-05, MSC-01, MSC-03, PRC-07, WST-01, WST-02, FSS-04, FLX-01, CMB-10, MSC-05, MSC-07, MSC-08, FSS-06, and FSS-07 in AQMP Chapter 4, Table 4-1, as qualified and explained in AQMP, Chapter 4, pages 4-59 through 4-61 and in Appendix IV-A Section 1, and SCAQMD commitments to achieve near-term and long-term emissions reductions through rule adoption and implementation in AQMP Chapter 4, Tables 4-8A and 4-8B; contingency measure CTY-01 in AQMP Chapter 9, Table 2 and in Appendix IV-A Section 2 (excluding FSS-05); nitrogen dioxide maintenance demonstration in AQMP Chapter 6 page 6-11; and motor vehicle emissions budget for nitrogen dioxide in year 2003 of 686 tons per day (winter planning inventory) in AQMP Chapter 6 Table 6-7.

(2) Letter from Elaine Chang, Deputy Executive Officer, South Coast Air Quality Management District, dated September 10, 2008, containing supplemental material related to on-road motor vehicles emissions.

\* \* \* \* \*

[FR Doc. E9-4593 Filed 3-9-09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

[EPA-HQ-OAR-2005-0131; FRL-8779-6]

RIN 2060-AM46

### Protection of Stratospheric Ozone: Recordkeeping and Reporting Requirements for the Import of Halon-1301 Aircraft Fire Extinguishing Vessels

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is taking final action to grant a specific exemption from requirements to petition the Agency in order to import used ozone-depleting substances. The exemption would apply to entities that import spherical pressure vessels containing halon 1301 for aircraft fire extinguishing (“aircraft halon bottles”) for purposes of hydrostatic testing. This final rule reduces the administrative burden on entities that are importing aircraft halon bottles for the purpose of maintaining these bottles to meet commercial safety specifications and standards set forth in airworthiness directives of the Federal Aviation Administration. This action does not exempt entities that import bulk quantities of halon-1301 in containers that are being imported for other purposes.

**DATES:** This final rule is effective on April 9, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2005-0131. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Bella Maranion, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *phone number:* (202) 343-9749; *fax number:* (202) 343-2362; *e-mail address:* [maranion.bella@epa.gov](mailto:maranion.bella@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. General Information**

*A. Regulated Entities*

The aircraft halon bottle exemption will affect the following categories:

Category	NAICS code	Examples of regulated entities
Hydrostatic testing laboratories or services .....	541380	Halon aircraft bottle testing facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA believes could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*B. Halons*

This final action relates to the importation of halons. Halons are gaseous or easily vaporized halocarbons used primarily for extinguishing fires, and for explosion protection. The two halons most widely used in the United

States are halon-1211 and halon-1301. This final rule is not expected to affect the supply of unblended halons.

Halons are used in a wide range of fire protection applications because they combine four characteristics. First, they are highly effective against solid, liquid/gaseous, and electrical fires (referred to as Class A, B, and C fires, respectively). Second, they dissipate rapidly, leaving no residue, and thereby avoid secondary damage to the property they are protecting. Third, halons do not conduct electricity and can be used in areas containing live electrical equipment where they can penetrate to and around physical objects to extinguish fires in otherwise inaccessible areas. Finally, halons are generally safe for limited human exposure when used with proper exposure controls.

While effective fire suppression agents, halons are among the most potent ozone-depleting substances (ODS). Halon-1301 has an ODP of 10.0

relative to CFC-11, and an atmospheric lifetime of 65 years. Halon-1211 has an estimated ODP of 3.0 relative to CFC-11, and an atmospheric lifetime of 16 years.

*C. Stratospheric Ozone Protection and Legal Authority*

The stratospheric ozone layer protects life on Earth from harmful ultraviolet (UV-B) radiation. Excessive UV-B exposure increases risk of skin cancer, cataracts, and suppressed immune function, as well as damage to plant life and aquatic ecosystems (WMO, 2007).<sup>1</sup> Emissions of halogenated gases that contain chlorine and bromine, including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), methyl bromide, and halons, destroy stratospheric ozone. Production and

<sup>1</sup> World Meteorological Organization, *Scientific Assessment of Ozone Depletion: 2006*, Global Ozone Research and Monitoring Project—Report No. 50, 572 pp., Geneva, Switzerland, 2007.

consumption of these chemicals is controlled globally under the *Montreal Protocol on Substances That Deplete the Ozone Layer* (the Montreal Protocol), and in the United States under the Clean Air Act (CAA) as amended.

The domestic regulatory requirements can be found at 40 CFR part 82. The *Montreal Protocol on Substances that Deplete the Ozone Layer* is the international agreement aimed at reducing and eventually eliminating the production and consumption of stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 21, 1988. Congress then enacted, and President Bush signed into law, the CAAA of 1990, which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has made amendments to the regulations since that time.

Section 604 of the CAAA of 1990 requires a production and consumption phaseout for all class I substances, including halons. Since January 1, 1994, in accordance with the Montreal Protocol and the accelerated phaseout provision of section 606 of the CAAA of 1990, U.S. production and importation of halon-1301 has been prohibited (40 CFR 82.4(c)(1), (d); 58 FR 65018). EPA's regulations allow for limited exceptions to the ban on import of phased-out class I controlled substances provided the substances are: (1) Previously used, recycled, or reclaimed and the importer files a petition and receives a non-objection notice from the Administrator (40 CFR 82.4(j)); (2) imported for essential or critical uses as authorized by the Protocol and the regulations; (3) a transhipment or a heel; or (4) transformed or destroyed (40 CFR 82.4(d)). This final rule amends the petition requirements for substances that are previously used, recycled, or reclaimed. The basis for treating these substances differently from new substances was established in previous rulemakings and is summarized under section I.D of this preamble.

Additional authority for the amendments in this final rule is found in section 608(a)(2) of the CAAA of 1990, which directs EPA to establish standards and requirements regarding use and disposal of class I and II substances other than refrigerants. The purpose of section 608(a) is to reduce the use and emission of ODS to the lowest achievable level and maximize the recapture and recycling of such

substances. EPA previously issued a rule implementing this provision with respect to halon use generally (63 FR 11084 (March 5, 1998) codified at 40 CFR part 82, subpart H). In the instance of aircraft halon bottles, EPA believes that this final rule will create a further incentive for industry to minimize emissions of halons by exempting certain importers from the up-front petition process in order to facilitate proper maintenance of the bottles and thereby minimize the potential for fissures and leaking of ODS from these bottles.

#### D. Import Petitioning Process

Initially, EPA did not make a distinction between the import of new and used controlled substances. In 1992, Decision IV/24 taken by the Parties to the Montreal Protocol interpreted Article 2 of the treaty as allowing a country to import a used ODS beyond the phaseout date of that substance. The Parties took this decision to promote the use of banks of ODS and to smooth the transition to ozone-safe alternatives. Following Decision IV/24, EPA added a regulatory provision to allow for the import of previously used or recycled controlled substances without consumption allowances (December 10, 1993, 58 FR 65018). Prior to that time, all imports of controlled substances, whether new or used, could only occur if the importing entity held and expended sufficient consumption allowances from EPA for the transaction (July 30, 1992, 57 FR 33754).

The Agency found, however, that the December 1993 rule was too permissive and that containers of virgin ODS could be, and in fact were, easily imported as fraudulently labeled used material. Other countries also experienced a rise in the illegal shipment of fraudulently labeled ODS following the reclassification of used ODS in Decision IV/24. Therefore, in 1994, EPA proposed to revise its regulations and require all importers to petition the Agency prior to importing a used ODS (November 10, 1994, 59 FR 56275). This petition process would allow the Agency to verify that a shipment in fact contained a used controlled substance and thus reduce, although not eliminate, the potential for illegal trade. In addition, the Agency also proposed to amend the defined phrase "used and recycled controlled substances" to eliminate the words "and recycled" and include only the term "used." In its description of the proposed changes to the definition of used controlled substances, the Agency further stated that: "[i]n this manner, a controlled substance is defined as used if it was recovered from a use system,

regardless of whether it was subsequently recycled or reclaimed" (59 FR 56285). These proposed changes, with minor adjustments based on comments, were issued by the Agency and the petition process for the import of used ODS was by EPA (May 10, 1995, 60 FR 24970). A subsequent final rule also was issued by the Agency that established the requirements that are currently in effect for the import petition process (December 31, 2002, 67 FR 79861).

The import petition requirements for class I substances are specified at 40 CFR 82.13(g)(2). They state, in part, that 40 days prior to shipment from the foreign port of export, the importer must provide information to the Administrator including, but not limited to the following: name and quantity of controlled substance to be imported; name and address of the importer along with information for a contact person; name and address of source facility along with information for a contact person; detailed description of the previous use providing documents where possible; a list of the name, make and model of the equipment from which the ODS was recovered; name and address of exporter along with contact information; the U.S. port of entry and expected date of shipment; a description of the intended use of the controlled substance; and the name and address of the U.S. reclamation facility where applicable. EPA may issue an objection to the petition if the information submitted by the importer lacks or appears to lack any of the information required under 40 CFR 82.13(g)(2), among other reasons. As further explained in section II below, the Agency recognizes that review of this information prior to import is not necessary for halon-1301 contained in aircraft halon bottles destined for service and is therefore amending its regulations as described in section II of this preamble.

#### E. History of Rulemaking

On April 11, 2006, EPA issued a direct final rule (71 FR 18219) and companion proposed rule (71 FR 18259) in the **Federal Register**. The direct final rule sought to exempt importers of aircraft halon bottles, which contain halon-1301, from the import petition process in order to facilitate the routine hydrostatic testing of these bottles for environmental and safety purposes. EPA published the amendment without prior proposal because the Agency viewed it as a noncontroversial action and anticipated no adverse comment. The Agency did not anticipate any adverse comment because of the importance of

testing aircraft halon bottles for safety purposes and the environmental benefit resulting from preventative maintenance of these containers. In the direct final rule, the Agency indicated that should we receive adverse comment by May 11, 2006, we would publish a timely withdrawal notice in the **Federal Register**. During the comment period, EPA received comments from a total of four submitters. These comments are contained in Air Docket EPA-HQ-OAR-2005-0131. Comments from three of the four submitters supported EPA's action to exempt importers of aircraft halon bottles from the import petition process. However, EPA received adverse comments from one commenter and, therefore, withdrew the direct final rule on June 7, 2006 (71 FR 32840). The Agency is addressing these comments in today's final action in section III below.

## II. Aircraft Halon Bottle Exemption From the Import Petitioning Process

### A. Summary of Final Rule

In this action, EPA is amending its regulations to exempt the import of aircraft halon bottles for hydrostatic testing from the import petition process.

EPA classifies halon-1301 contained in aircraft halon bottles that were removed from an on-board fire suppression system as used controlled substances. EPA regulations define "used controlled substances" as "controlled substances that have been recovered from their intended use systems (may include controlled substances that have been, or may be subsequently, recycled or reclaimed)" (40 CFR 82.3). Halon-1301 is placed into aircraft bottles and the bottles are then inserted into a fire suppression system. When the system is dismantled or the bottles are removed from the system, the halon-1301 contained in the bottles is considered used since it was removed from a use system.

In the history of the program, the mechanisms that govern the import of used ODS have ranged from no controls to a detailed up-front petition process. The Agency has selected implementation mechanisms considering many factors including practicability and protection of the ozone layer. When EPA believed it was to the benefit of the environment to encourage the import of used ODS, the Agency implemented a nonrestrictive import mechanism. When the Agency discovered a rise in illegal trade of ODS, EPA instituted a thorough petition process to curb the traffic of illicit material.

EPA does not believe that it is economically feasible to import halon-

1301 illegally in aircraft bottles due to the size, costs, and uniqueness of the bottles. Thus, the illegal-trade basis for EPA's rigorous petition process does not apply in this instance. Furthermore, EPA believes that a narrow exemption for aircraft halon bottles is appropriate because it will remove impediments to the proper management of these halon-1301 containing bottles. In the United States and abroad, the exclusion of these aircraft bottles from the import petition process will cause transit and testing to occur more expeditiously, thus promoting proper maintenance of these fire suppression devices and prevention of accidental emissions. Proper maintenance of these bottles is crucial for safety and environmental protection.

### B. Import of Aircraft Halon Bottles for Hydrostatic Testing

Halon-1301 is used in aircraft halon bottles that are components of larger fire suppression systems used on aircraft. Halon bottles are pressurized containers that typically contain from one to one hundred pounds of a halon-1301/nitrogen mixture. As halon bottles are under high pressure in severe environments, they are at risk of leakage and their effectiveness may decrease over time. Hydrostatic testing of the bottles detects such leakage and determines whether the bottles are functioning properly.

The halon bottles must be tested routinely under Federal Aviation Administration (FAA) and United States Department of Transportation (DOT) regulations. Federal Aviation Regulations (FAR) section 25.851 (a)(6) (14 CFR Part 25) requires the presence of halon bottles aboard transport category aircraft. The FAA Flight Standards Handbook Bulletin for Airworthiness 02-01B (effective 7/16/02 and amended 2/10/03) provides guidance on the maintenance and inspection of the halon bottles and states in paragraph 3(b) that "pressure cylinders that are installed as aircraft equipment will be maintained and inspected in accordance with manufacturer's requirements." Manufacturer's requirements specify periodic testing of aircraft halon bottles.

Halon bottles may be serviced by an on-site facility at an airport or may be removed from the aircraft, shipped to a testing facility at a location in the U.S. or abroad, and then returned to the airline. Once a hydrostatic testing company receives the halon bottles, the used halon-1301 is removed and recovered for future reclamation. The bottles are then hydrostatically tested to ensure durability and effectiveness, after

which they are re-filled with halon-1301 and returned to the customer.

To better understand this process, EPA received information from two major service companies and about 15 other companies that provide hydrostatic testing services to the airline industry. Industry experts estimate that approximately 60,000 bottles are in service globally, some portion of which are serviced in U.S. testing facilities. Information provided to the Agency from the two major U.S. companies indicates that each year those companies service about 5,000 bottles, some portion of which are imported. The amount of halon in the aircraft bottles can range from 1 to 100 pounds of halon-1301, although most bottles contain between 5 to 25 pounds. EPA understands that not all aircraft bottles are imported with complete charges, meaning that a bottle capable of holding 25 pounds of halon-1301 may in fact contain less. It is industry practice, however, to export the bottles back to the country of origin with a full charge of halon-1301.

### C. Exemption to the Import Petition Requirements

This final rule exempts importers of halon-1301 shipped in aircraft halon bottles from the petition import requirements under 40 CFR 82.13(g)(2), as described in the previous section of this preamble. An importer or exporter of halon-1301 contained in aircraft halon bottles is typically a maintenance and testing facility that is a certified repair station under 14 CFR part 145 or an aircraft halon bottle manufacturer that imports and exports aircraft fire extinguishing pressure vessels for servicing, maintenance, and hydrostatic testing. Under this final rule, importers of aircraft halon bottles are no longer required to submit petition data to, and seek approval from, the Administrator prior to individual imports.

### D. Reporting and Recordkeeping Requirements for Importers and Exporters

The Agency tracks the amount of used halon-1301 imported and exported annually in aircraft bottles because such movement of halon across U.S. borders constitutes import and export as characterized under 40 CFR part 82. EPA reminds importers of aircraft bottles that despite the exception to the petition requirements finalized in this action, they are still required to maintain import records, as set forth in 40 CFR 82.13(g)(1), including but not limited to the following: (i) The quantity of each controlled substance imported, either alone or in mixtures, including

the percentage of each mixture which consists of a controlled substance; (ii) The quantity of those controlled substances imported that are used (including recycled or reclaimed); (iv) The date on which the controlled substances were imported; (v) The port of entry through which the controlled substances passed; (vi) The country from which the imported controlled substances were imported; (vii) The commodity code for the controlled substances shipped, which must be one of those listed in Appendix K to 40 CFR part 82, subpart A; (viii) The importer number for the shipment; (ix) A copy of the bill of lading for the import; (x) The invoice for the import; (xi) The quantity of imports of used, recycled or reclaimed class I controlled substances; and (xii) The U.S. Customs entry form.

EPA is amending the recordkeeping requirement at 40 CFR 82.13(g)(1) to state that information provided through the petition process is only to be maintained "where applicable." No such information will have been provided in the case of aircraft halon bottles. EPA is not amending the remaining reporting and recordkeeping requirements for importers and exporters, found at 40 CFR 82.13(g)(4) and (h)(1) respectively, but is summarizing the requirements relevant to importers and exporters of halon aircraft bottles in this preamble for convenience of the public. Persons who import or export halon aircraft bottles should refer to the regulations for the definitive list of requirements.

EPA reminds importers of aircraft halon bottles that they are required to submit quarterly reports within 45 days of the end of the applicable quarter, in accordance with 40 CFR 82.13(g)(4). These quarterly reports include but are not limited to the following information: (i) A summary of the records required in paragraphs 40 CFR 82(g)(1)(i) through (xvi) for the previous quarter; (ii) the total quantity imported in kilograms of each controlled substance for that quarter; and (iii) the quantity of those controlled substances imported that are used controlled substances. EPA reminds persons that test and subsequently export aircraft halon bottles that they must submit an annual report (45 days after the end of the calendar year, in accordance with 40 CFR 82.13(h)). The annual report must include but is not limited to the following information: (i) The names and addresses of the exporter and the recipient of the exports; (ii) The exporter's Employee Identification Number; (iii) The type and quantity of each controlled substance exported and what percentage, if any, of the

controlled substance is used, recycled or reclaimed; (iv) The date on which, and the port from which, the controlled substances were exported from the United States or its territories; (v) The country to which the controlled substances were exported; (vi) The amount exported to each Article 5 country; (vii) The commodity code of the controlled substance shipped.

EPA has provided guidance on the reporting and recordkeeping requirements. The importer quarterly report form and the annual exporter report form may be found on EPA's Web site at <http://www.epa.gov/ozone/record>. This information is also available via the Ozone Hotline at (800) 296-1996.

### III. Response to Comments

A commenter on the April 11, 2006, rule (71 FR 18259) opposes any use of halons and opposes reducing the burden for those who import halons. EPA does not agree with the commenter's concerns regarding the potential adverse health effects of direct exposure to halons, or using this as a basis for opposing the exemption to the import petition process for importers of aircraft halon bottles. Halons are gaseous or easily vaporized halocarbons that were developed for, and have been used in, a wide range of fire protection applications because they combine four important characteristics. First, they are highly effective against solid, liquid/gaseous, and electrical fires. Second, they dissipate rapidly, leaving no residue. Third, halons do not conduct electricity and can be used in areas containing live electrical equipment. Finally, halons are generally safe for limited human exposure when used with proper exposure controls. This action is not expected to affect the supply or the continued use of halons for these applications. It concerns the import of used halons and does not allow the production of additional quantities of halons.

With regard to the commenter's opposition to reducing the recordkeeping and reporting requirements for importers of aircraft halon bottles, EPA believes that this action will create a further incentive for industry to minimize emissions of halons while facilitating the proper maintenance of the bottles and thereby minimizing inadvertent leaks. Proper maintenance of these bottles is crucial from a safety perspective in order to prevent leakage and meet bottle testing requirements under FAA and DOT regulations. Because halons are among the most potent ozone-depleting substances in use today, minimizing

emissions is also important for the environment. As discussed in section II.D. above, despite the exception to the petition requirements finalized in this action, importers of aircraft halon bottles remain subject to recordkeeping and reporting requirements.

### IV. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

#### B. Paperwork Reduction Act

This action does not impose any new information collection burden. Current recordkeeping and reporting requirements under 40 CFR 82.13 allow EPA to implement the provisions of this final rule. This action will reduce the reporting burden that would otherwise be required under 40 CFR 82.13(g) by removing the requirement to submit information to EPA prior to each import of aircraft halon bottles. OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0170, EPA ICR number 1432.25. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB

control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business that is primarily engaged in the hydrostatic testing of aircraft halon bottles as defined in NAICS code 541380 with annual receipts less than \$10,000,000 (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. None of the entities affected by this rule are considered small as defined in NAICS code 541380. This action will reduce the reporting burden that would otherwise be required under 40 CFR 82.13(g) by removing the requirement to submit information to EPA prior to each import of aircraft halon bottles. EPA has thus determined that this final rule will relieve burden on all entities that import aircraft halon bottles.

#### D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory

requirements that might significantly or uniquely affect small governments. Rather, this action will reduce the reporting burden that would otherwise be required under 40 CFR 82.13(g) by removing the requirement to submit information to EPA prior to each import of aircraft halon bottles.

#### E. Executive Order 13132: Federalism

Executive Order 13132, titled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule is expected to primarily affect importers and exporters of halons. Thus, Executive Order 13132 does not apply to this rule.

#### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Rather, this action will reduce the reporting burden that would otherwise be required under 40 CFR 82.13(g) by removing the requirement to submit information to EPA prior to each import of aircraft halon bottles. Thus, Executive Order 13175 does not apply to this action.

#### G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. EPA nonetheless has reason to believe that the environmental, health, or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's

surface. The following studies describe the effects on children of excessive exposure to UV radiation: (1) Westerdahl J, Olsson H, Ingvar C. "At what age do sunburn episodes play a crucial role for the development of malignant melanoma," *Eur J Cancer* 1994; 30A: 1647–54; (2) Elwood JM, Jopson J. "Melanoma and sun exposure: an overview of published studies," *Int J Cancer* 1997; 73:198–203; (3) Armstrong BK. "Melanoma: childhood or lifelong sun exposure," In: Grob JJ, Stern RS, Mackie RM, Weinstock WA, eds. "Epidemiology, causes and prevention of skin diseases," 1st ed. London, England: Blackwell Science, 1997: 63–6; (4) Whiteman D., Green A. "Melanoma and Sunburn," *Cancer Causes Control*, 1994: 5:564–72; (5) Kricger A, Armstrong, BK, English, DR, Heenan, PJ. "Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia," *Int J Cancer* 1995; 60: 489–94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, et al. "Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma," *Arch Dermatol* 1995; 131: 157–63; (7) Armstrong, BK. "How sun exposure causes skin cancer: an epidemiological perspective," *Prevention of Skin Cancer*. 2004. 89–116.

EPA anticipates that this rule will have a positive impact on the environment and human health by removing a disincentive to preventive maintenance of aircraft halon bottles and reducing the likelihood of accidental emissions. Any impact this action does have will be to further decrease impacts on children's health from stratospheric ozone depletion.

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

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

#### I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and

business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. EPA anticipates that this rule will have a positive impact on the environment and human health by removing a disincentive to preventive maintenance of aircraft halon bottles and reducing the likelihood of accidental emissions. Thus, this rule is not expected to increase the impacts on the health of minority or low-income populations from stratospheric ozone depletion.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective April 9, 2009.

**List of Subjects in 40 CFR Part 82**

Environmental protection, Administrative practice and procedure, Chemicals, Exports, Halon, Imports, Ozone layer, Reporting and recordkeeping requirements.

Date: March 4, 2009.

**Lisa P. Jackson**,  
*Administrator.*

■ For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

**PART 82—PROTECTION OF STRATOSPHERIC OZONE**

■ 1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Section 82.3 is amended by adding, in alphabetical order, definitions for “Aircraft halon bottle” and “Hydrostatic testing” to read as follows:

**§ 82.3 Definitions for class I and class II controlled substances.**

\* \* \* \* \*

*Aircraft halon bottle* means a vessel used as a component of an aircraft fire suppression system containing halon-1301 approved under FAA rules for installation in a certificated aircraft.

\* \* \* \* \*

*Hydrostatic testing* means checking a gas pressure vessel for leaks or flaws. The vessel is filled with a nearly incompressible liquid—usually water or oil—and examined for leaks or permanent changes in shape.

\* \* \* \* \*

■ 3. Section 82.4 is amended by revising the first sentence of paragraph (j) to read as follows:

**§ 82.4 Prohibitions for class I controlled substances.**

\* \* \* \* \*

(j) Effective January 1, 1995, no person may import, at any time in any control period, a used class I controlled substance, except for Group II used controlled substances shipped in aircraft halon bottles for hydrostatic testing, without having received a non-objection notice from the Administrator in accordance with § 82.13(g)(2) and (3).

\* \* \* \* \*

■ 4. Section 82.13 is amended by revising paragraphs (g)(1)(ii) and (g)(2) introductory text to read as follows:

**§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.**

\* \* \* \* \*

(g) \* \* \*  
(1) \* \* \*

(ii) The quantity of those controlled substances imported that are used (including recycled or reclaimed) and, where applicable, the information provided with the petition as under paragraph (g)(2) of this section;

\* \* \* \* \*

(2) Petitioning—Importers of Used, Recycled or Reclaimed Controlled Substances. For each individual shipment over 5 pounds of a used controlled substance as defined in § 82.3, except for Group II used controlled substances shipped in aircraft halon bottles for hydrostatic testing, an importer must submit directly to the Administrator, at least 40 working days before the shipment is to leave the foreign port of export, the following information in a petition:

\* \* \* \* \*

[FR Doc. E9–5073 Filed 3–9–09; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 09–523; MB Docket No. 08–125; RM–11457]

**Television Broadcasting Services; Scranton, PA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition for rulemaking filed by Local TV Pennsylvania License, LLC, the licensee of station WNEP-DT, to substitute DTV channel 50 for post-transition DTV channel 49 at Scranton, Pennsylvania.

**DATES:** This rule is effective March 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** David J. Brown, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s *Report and Order*, MB Docket No. 08–125, adopted February 26, 2009, and released February 27, 2009. The full text of this document is available for public inspection and copying during normal