

[FR Doc. 04-4210 Filed 2-26-04; 8:45 am]

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**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Parts 9 and 94**

[AMS-FRL-7627-4]

RIN 2060-AJ98

**Control of Emissions From New Marine  
Diesel Compression-Ignition Engines  
at or Above 30 Liters Per Cylinder****AGENCY:** Environmental Protection  
Agency (EPA).**ACTION:** Final rule; correction.**SUMMARY:** This correction renumbers a paragraph of 40 CFR 94.12 that was inadvertently misnumbered in the final rule published on February 28, 2003 (68 FR 9746).**DATES:** This final rule is effective on March 29, 2004.**ADDRESSES:** Materials relevant to this rulemaking are in Public Dockets A-2000-01 and A-2001-11 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566-1742 and by facsimile at (202) 566-1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.**FOR FURTHER INFORMATION CONTACT:** Alan Stout, Assessment and Standards Division, e-mail [stout.alan@epa.gov](mailto:stout.alan@epa.gov), voice-mail (734) 214-4636.**SUPPLEMENTARY INFORMATION:** Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this rule final without prior proposal and opportunity for comment because we are amending 40 CFR part 94 by simply renumbering paragraph 40 CFR 94.12(f) that was subject to notice and comment and issued as part of the final rule establishing emission standards for Category 3 marine diesel engines (68 FR 9746, February 28, 2003). This paragraph was inadvertently labeled as

40 CFR 94.12(f) when a paragraph 94.12(f) already existed. A subsequent rulemaking renumbered the previously existing paragraph 94.12(f) as 94.12(h). This correction restores the numbering for the paragraph from the Category 3 marine diesel engine rule as 40 CFR 94.12(f). Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

The statutory authority for this action comes from sections 114, 213, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7547, and 7601(a)). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7606(d)(1).

**Statutory and Executive Order Reviews**Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore neither subject to review by the Office of Management and Budget nor subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy, Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as described above, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This rule will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the September 19, 2003 **Federal Register** notice (68 FR 54956).The Congressional Review Act (5 U.S.C. 801 *et seq.*) 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**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).**List of Subjects in 40 CFR Part 94**

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

Dated: February 20, 2004.

**Michael O. Leavitt,**  
*Administrator.*

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

**PART 94—CONTROL OF EMISSIONS  
FROM MARINE COMPRESSION-  
IGNITION ENGINES**

■ 1. The authority citation for part 94 continues to read as follows:

**Authority:** 42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550 and 7601(a).**Subpart A—[Amended]**

■ 2. Section 94.12 is amended by adding paragraph (f) to read as follows:

**§ 94.12 Interim provisions.**

\* \* \* \* \*

(f) Manufacturers may submit test data collected using the Annex VI test procedures to show compliance with Tier 1 standards for model years before 2007. Note: Starting in 2007, EPA may approve a manufacturer's request to continue using alternate procedures under § 94.102(c), as long as the manufacturer satisfies EPA that the differences in testing will not affect NO<sub>x</sub> emission rates.

\* \* \* \* \*

[FR Doc. 04-4385 Filed 2-26-04; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[Region 2 Docket No. VI-5-265 W, FRL-7627-3]

**An Exemption From Requirements of the Clean Air Act for the Territory of United States Virgin Islands; Withdrawal of Direct Final Rule**

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to receipt of an adverse comment, EPA is withdrawing the direct final rule which granted an exemption of the Clean Air Act (CAA) section 165(a) requirement to obtain a Prevention of Significant Deterioration (PSD) Permit to Construct. The direct final rule was published on December 31, 2003. As stated in the direct final rule, if adverse comments were received by January 30, 2004, a timely withdrawal would be published in the **Federal Register**. EPA subsequently received an adverse comment. EPA will address the comments in a subsequent final action based upon the proposed action also published on December 31, 2003 (68 FR 75786). EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published at 68 FR 75782, December 31, 2003, is withdrawn on February 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** Umesh Dholakia, Environmental Engineer, Air Programs Branch, Division of Environmental Protection and Planning, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4023 or at [Dholakia.Umesh@epa.gov](mailto:Dholakia.Umesh@epa.gov).

**List of Subjects in 40 CFR Part 69**

Environmental protection, Air pollution control.

**Authority:** 42 U.S.C. 7625-1.

Dated: February 20, 2004.

**Jane M. Kenny,**  
Regional Administrator, Region 2.

**PART 69—[AMENDED]**

■ Accordingly, the addition at 40 CFR 69.41(h), published on December 31, 2003 (68 FR 75782) is withdrawn as of February 27, 2004.

[FR Doc. 04-4386 Filed 2-26-04; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[MM Docket No. 02-277; DA 04-320]

**Additional Comment Sought on UHF Television Discount**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; request for comments.

**SUMMARY:** In light of recent legislation affecting the national television ownership limit, this document establishes a limited comment period to afford petitioners and commenters an opportunity to update the record regarding the Commission's previous decision to retain the 50 percent UHF discount. Pending petitions for reconsideration urge the Commission to eliminate the UHF discount. The limited comment period is intended to afford petitioners and commenters an opportunity to update the record as to the effect, if any, of recent legislation on the Commission's authority and decision in this area.

**DATES:** Submit comments on or before March 19, 2004, and reply comments on or before March 29, 2004.

**ADDRESSES:** 445 12th Street, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Debra Sabourin or Patrick Webre, Industry Analysis Division, Media Bureau, 202-418-2330.

**SUPPLEMENTARY INFORMATION:**

**Synopsis of the Order on Reconsideration**

1. On June 2, 2003, the Commission adopted the 2002 Biennial Regulatory Review Report and Order in this proceeding. (*In the Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, and Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area* (Report and Order), 68 FR 46286, August 5, 2003, appeal pending *sub nom. Prometheus Radio Project, et al. v. FCC*, Nos. 03-3388, *et al.* (3d Cir.). The rule changes adopted in the Report and Order were stayed by the U.S. Court of Appeals for the Third Circuit and did not go into effect.) Among other things,

the Report and Order raised the Commission's national television multiple ownership limit (47 CFR 73.3555(e)) from 35 percent to 45 percent. The Report and Order also retained the Commission's 50 percent UHF discount.

2. On January 22, 2004, President Bush signed into law the Consolidated Appropriations Act, 2004, H.R. 2673. (Consolidated Appropriations Act, 2004, Public Law 108-199, section 629, 118 Stat. 3 (2004) (Appropriations Act). Section 629(1) of the Appropriations Act amends Section 202(c) of the Telecommunications Act of 1996 (Telecom Act), and directs the Commission to modify the national television ownership limit to 39 percent. Pending petitions for reconsideration ask the Commission to reconsider its decision to retain the UHF discount, urging its immediate elimination.<sup>1</sup> We are opening a limited comment period in order to afford petitioners and commenters an opportunity to update the record as to the effect, if any, of the Appropriations Act on our authority and decision in this area. We invite comment as to whether the enactment of the 39 percent national cap affects our authority to modify or eliminate the UHF discount. For example, does passage of the 39 percent cap signify congressional approval, adoption, or ratification of the 50 percent UHF discount?

3. Comments must be filed on or before March 19, 2004; and reply comments must be filed by March 29, 2004. Comments and reply comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies (an original and four copies). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). All comments should reference MB Docket No. 02-277. The Commission incorporates by reference the Initial Regulatory Flexibility Analysis published in the Notice of Proposed Rulemaking in this proceeding. (*2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules adopted Pursuant to Section 202*

<sup>1</sup> See petitions for reconsideration filed by the Amherst Alliance and Virginia Center for the Public Press; Capitol Broadcasting Company, Inc.; and Office of Communication of the United Church of Christ, Inc.; Black Citizens for a Fair Media, Philadelphia Lesbian and Gay Task Force, and Women's Institute for Freedom of the Press (UCC, *et al.*) The full text of the petitions for reconsideration, the oppositions, and the replies is available electronically at <http://www.fcc.gov/cgb/ecfs> under MB Docket No. 02-277, or from the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 863-2893.

of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, 67 FR 65751, October 28, 2002, 17 FCC Rcd 18503, Appendix A.)

4. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

5. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents also will be available electronically from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this

proceeding may be obtained from Qualex International, Portals II, 445 12th Street, SW., Room, CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

#### List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

W. Kenneth Ferree,  
Chief, Media Bureau.

[FR Doc. 04-4391 Filed 2-26-04; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 00-7145; Notice 2]

RIN 2127-AH61

### Federal Motor Vehicle Safety Standards; Head Impact Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.  
**ACTION:** Final rule.

**SUMMARY:** This document amends the upper interior impact requirements of the Federal motor vehicle safety standard on occupant protection in interior impact to increase the minimum separation distance between tested areas on vertical surfaces of a motor vehicle. Compliance with the upper interior impact requirements is determined, in part, by measuring the forces experienced by a test device known as the Free Motion Headform (FMH) when it is propelled into certain target circles in the vehicle interior. To ensure that tests conducted within the same vehicle do not affect each other, the standard specifies that tested targets be at least a certain distance apart; currently 150 mm (6 inches). This final rule expands this minimum separation distance for certain target locations through the use of an FMH-shaped "exclusion zone" to alleviate concerns that the striking of one target would affect compliance at other nearby targets in the same vehicle. This final rule also adds targets for pillar-like structures that do not meet the definition of "pillar," *i.e.*, certain

door frames and freestanding vertical seat belt mounting structures.

**DATES:** *Effective Date:* August 25, 2004.

*Petition Date:* Any petitions for reconsideration must be received by NHTSA no later than April 12, 2004.

**ADDRESSES:** Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Dr. William Fan, Office of Crashworthiness Standards, at (202) 366-4922.

For legal issues, you may call Otto Matheke, Office of the Chief Counsel, at (202) 366-5263.

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#### I. Safety Problem

In an August 18, 1995 final rule (60 FR 43031) adding requirements for upper interior impact protection to Standard No. 201, "Occupant Protection in Interior Impact," NHTSA estimated that even with air bags installed in all passenger cars, trucks, buses, and multipurpose passenger vehicles (collectively, passenger cars and LTVs) with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less, head impacts with the pillars, roof side rails, windshield header, and rear header would result in 1,591 annual passenger car occupant fatalities and 575 annual LTV occupant fatalities. We also stated that such head impacts also result in nearly 13,600