

involving circadian rhythm disruption, as a 9/11 exposure, could be associated with breast cancer.<sup>3</sup> For that reason, the Administrator determined that breast cancer would be included on the List, but that the relevant exposures would be limited to nighttime sleep disruption related to response and cleanup activities (including shiftwork). Accordingly, the WTC Health Program has only considered exposure to nighttime sleep disruption related to response and cleanup activities when certifying breast cancers for treatment in WTC responders and survivors.

### C. New Information on Breast Cancer and PCBs

On March 15, 2013, the IARC Monograph Working Group announced a change in its classification of polychlorinated biphenyls (PCBs). According to the Working Group's article, published in *The Lancet Oncology*,<sup>4</sup> a review of more than 70 epidemiological studies led IARC to determine that the studies provided limited evidence of increased risks for breast cancer for individuals with exposures to PCBs.<sup>5</sup>

In reviewing this new information, the Administrator finds that all of the criteria in Method 3 supporting the addition of breast cancer to the List based on PCB exposures are now satisfied: PCBs have been reported in several exposure assessment studies of

responders or survivors of the September 11, 2001, terrorist attacks in New York City (Method 3A);<sup>6</sup> NTP identified PCBs as reasonably anticipated to be a human carcinogen<sup>7</sup> and IARC has recently found limited evidence that PCBs cause breast cancer (Method 3B).

Consequently, the Administrator finds that PCB exposures associated with the 9/11 attacks (including response and remediation activities) qualify as another exposure basis—in addition to nighttime sleep disruption related to response and cleanup activities (including shiftwork)—for certifying a member's breast cancer for treatment.

### D. Effect on Breast Cancer Coverage

As a result of this finding by the Administrator, eligible responders and survivors who experienced the requisite exposure to either nighttime sleep disruption related to response and cleanup activities (including shiftwork) or PCBs (in dust and smoke) resulting from the 9/11 attacks may be certified for treatment of breast cancer.

Dated: April 11, 2013.

**John Howard,**

*Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.*

[FR Doc. 2013-09003 Filed 4-16-13; 8:45 am]

**BILLING CODE 4163-19-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 48 CFR Part 1552

[EPA-HQ-OARM-2012-0196; FRL-9800-6]

### EPAAR Clause for Printing

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

**ACTION:** Final rule.

<sup>6</sup> Butt CM, Diamond ML, Truong J, Ikonomou MG, Helm PA, Stern GA [2004]. Semivolatile organic compounds in window films from lower Manhattan after the September 11th World Trade Center attacks. *Environmental Science & Technology*. 38(13):3514-3524.

Lorber M, Gibb H, Grant L, Pinto J, Pleil J, Cleverly D [2007]. Assessment of inhalation exposures and potential health risks to the general population that resulted from the collapse of the World Trade Center towers. *Risk Anal* 27(5):1203-21.

Lioy PJ, Gochfeld M [2002]. Lessons learned on environmental, occupational, and residential exposures from the attack on the World Trade Center. *Am J Ind Med* 42(6):560-565.

<sup>7</sup> NTP (National Toxicology Program) [2011]. 12th Report on Carcinogens. National Toxicology Program, Public Health Service, U.S. Department of Health and Human Services, Research Triangle Park, NC. <http://ntp.niehs.nih.gov/ntp/roc/twelfth/profiles/PolychlorinatedBiphenyls.pdf>. Accessed March 28, 2013.

<sup>3</sup> Shiftwork involving circadian rhythm disruption has been classified by IARC as *probably* carcinogenic based in part on limited evidence in humans demonstrating an increased risk of breast cancer among shiftworkers who work at night. IARC notes that mechanistic studies suggest that exposure to light at night may increase the risk of breast cancer by suppressing the normal nocturnal production of melatonin, which in turn, may alter gene expression in cancer-related pathways [Straif, et al. 2007]. NTP has not yet examined the evidence for an association of shiftwork and breast cancer, however, NTP recently requested comment from the public on whether shiftwork involving light at night should be nominated for possible review for future editions of the RoC. [NTP 2012] The Administrator was not aware of any published exposure assessment study of shiftwork and 9/11, although the Administrator was aware that extended work hours for many responders occurred at all three 9/11 sites over several months. Thus the evidence supporting an association between shiftwork and breast cancer did not meet all of the requirements of Method 3; however, the Administrator felt the STAC's recommendation and support for an association between shiftwork and female breast cancer was sufficient to add breast cancer to the List of WTC-Related Health Conditions based on Method 4.

<sup>4</sup> Lauby-Secretan B, Loomis D, Grosse Y, El Ghissassi F, Bouvard V, Benbrahim-Tallaa L, Guha N, Baan R, Mattock H, Straif K (on behalf of IARC Monograph Working Group) [2013]. Carcinogenicity of Polychlorinated Biphenyls and Polybrominated Biphenyls. *The Lancet Oncology* 14(4):287-288.

<sup>5</sup> According to the Lancet article, the Working Group's assessments will be published as volume 107 of the IARC Monographs.

**SUMMARY:** The Environmental Protection Agency (EPA) amends the EPA Acquisition Regulation (EPAAR) to update policy, procedures, and contract clauses. The final rule provides updates to outdated information previously in the EPAAR *Printing* clause.

**DATES:** This final rule is effective on April 17, 2013.

**ADDRESSES:** *Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov), or in hard copy at the Office of Environmental Information (OEI) 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 EPA Docket Center is (202) 566-1752. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Thomas Valentino, Policy, Training, and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202-564-4522; email address: [valentino.thomas@epa.gov](mailto:valentino.thomas@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background

In 2011 the EPA reviewed EPAAR clause 1552.208-70, *Printing*. Review was performed to reconsider the electronic reproduction threshold under which vendors may provide contract deliverables without violating mandatory printing source requirements. Reconsideration of the reproduction threshold was warranted given the ease with which electronic media may be reproduced. The clause is also being updated to clarify that EPA's Print Management Team is the processing office responsible for clause printing requirement waivers provided by the Joint Committee on Printing. Finally, the definition of non-paper copies that the contractor may provide has been expanded to include other types of portable electronic media in addition to compact discs. As such, the

updates to the clause raise the limit for contractor-provided non-paper copies from 100 to 500, and clarifies that EPA's Print Management Team is the processing office responsible for clause printing requirement waivers. On October 4, 2012 (77 FR 60667) EPA sought comments on the proposed rule and received no comments.

## II. Final Rule

This final rule amends the EPAAR to revise the following within the *Printing* clause: 1. Paragraph (d)(2)—changed from “the contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing” to “Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.”

2. Paragraph (d)(3)—changed from “the contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing” to “Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.”

3. Paragraph (d)(4)—changed from “the contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing” to “Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.”

4. Paragraph (d)(4)—duplication limit changed from 100 to 500.

5. Paragraph (d)(4)—examples of non-paper duplication expanded from “CDs/DVDs” to “electronic information storage device.”

## III. 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 therefore, not subject to review under the EO.

### B. Paperwork Reduction Act

This action does not impose an information collection burden under the

provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. No information is collected under this action.

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

The Regulatory Flexibility Act 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 impact of today's final rule on small entities, “small entity” is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (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 rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action revises a current EPAAR provision and does not impose requirements involving capital investment, implementing procedures, or record keeping. This rule will not have a significant economic impact on small entities.

### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector.

This rule contains no Federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, Local, and Tribal governments or the private sector. The rule imposes no enforceable duty on any State, Local or Tribal governments or the private sector. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

### E. Executive Order 13132: Federalism

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

This 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.

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have tribal implications as specified in Executive Order 13175.

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

Executive Order 13045, entitled “Protection of Children from Environmental Health and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12886, and because it does not involve decisions on environmental health or safety risks.

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

This final rule is not subject to Executive Order 13211, “Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution of Use” (66 FR 28335, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act of 1995 (NTTAA)*

Section 12(d) (15 U.S.C. 272 note) of NTTA, Public Law 104–113, 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 NTTA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards. Therefore, EPA is not considering 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 does not affect the level of protection provided to human health or the environment. This rulemaking does not involve human health or environmental affects.

#### *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. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today’s action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

#### **List of Subjects in 48 CFR Part 1552**

Government procurement, Reporting and recordkeeping requirements.

Dated: April 1, 2013.

**John R. Bashista,**

*Director, Office of Acquisition Management.*

Therefore, 48 CFR Chapter 15 is amended as set forth below:

#### **PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 1. The authority citation for part 1552 continues to read as follows:

**Authority:** 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

■ 2. Revise 1552.208–70 to read as follows:

##### **1552.208–70 Printing.**

As prescribed in 1508.870, insert the following clause:

Printing (SEP 2012)

(a) *Definitions.* “Printing” is the process of composition, plate making, presswork, binding and microform; or the end items produced by such processes and equipment. Printing services include newsletter production and periodicals which are prohibited under EPA contracts.

“Composition” applies to the setting of type by hot-metal casting, photo typesetting, or electronic character generating devices for the purpose of producing camera copy, negatives, a plate or image to be used in the production of printing or microform.

“Camera copy” (or “camera-ready copy”) is a final document suitable for printing/duplication.

“Desktop Publishing” is a method of composition using computers with the final output or generation of a camera copy done by a color inkjet or color laser printer. This is not considered “printing.” However, if the output from desktop publishing is being sent to a typesetting device (i.e., Linotronic) with camera copy being produced in either paper or negative format, these services are considered “printing.”

“Microform” is any product produced in a miniaturized image format, for mass or general distribution and as a substitute for

conventionally printed material. Microform services are classified as printing services and include microfiche and microfilm. The contractor may make up to two sets of microform files for archival purposes at the end of the contract period of performance.

“Duplication” means the making of copies on photocopy machines employing electrostatic, thermal, or other processes without using an intermediary such as a negative or plate.

“Requirement” means an individual photocopying task. (There may be multiple requirements under a Work Assignment or Delivery Order. Each requirement would be subject to the duplication limitation of 5,000 copies of one page or 25,000 copies of multiple pages in the aggregate per requirement).

“Incidental” means a draft and/or proofed document (not a final document) that is not prohibited from printing under EPA contracts.

(b) *Prohibition.* (1) The contractor shall not engage in, nor subcontract for, any printing in connection with the performance of work under this contract. Duplication of more than 5,000 copies of one page or more than 25,000 copies of multiple pages in the aggregate per requirement constitutes printing. The intent of the printing limitation is to eliminate duplication of final documents.

(2) In compliance with EPA Order 2200.4a, EPA Publication Review Procedure, the Office of Communications, Education, and Media Relations is responsible for the review of materials generated under a contract published or issued by the Agency under a contract intended for release to the public.

(c) *Affirmative Requirements.* (1) Unless otherwise directed by the contracting officer, the contractor shall use double-sided copying to produce any progress report, draft report or final report.

(2) Unless otherwise directed by the contracting officer, the contractor shall use recycled paper for reports delivered to the Agency which meet the minimum content standards for paper and paper products as set forth in EPA’s Web site for the Comprehensive Procurement Guidelines at: <http://www.epa.gov/cpg/>.

(d) *Permitted Contractor Activities.* (1) The prohibitions contained in paragraph (b) do not preclude writing, editing, or preparing manuscript copy, or preparing related illustrative material to a final document (camera-ready copy) using desktop publishing.

(2) The contractor may perform a requirement involving the duplication of less than 5,000 copies of only one page, or less than 25,000 copies of multiple pages in the aggregate, using one color (black), such pages shall not exceed the maximum image size of 10¾ by 14¼ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these thresholds, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA’s

Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel. Duplication services of “incidentals” in excess of the thresholds are allowable.

(3) The contractor may perform a requirement involving the multi-color duplication of no more than 100 pages in the aggregate using color copier technology, such pages shall not exceed the maximum image size of 10¾ by 14¼ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these limits, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA’s Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.

(4) The contractor may perform the duplication of no more than a total of 500 units of an electronic information storage device (e.g., CD-ROMs, DVDs, thumb drives<sup>1</sup>) (including labeling and packaging) per work assignment or task order/delivery order per contract year. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these thresholds, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA’s Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.

(e) *Violations.* The contractor may not engage in, nor subcontract for, any printing in connection with the performance of work under the contract. The cost of any printing services in violation of this clause will be disallowed, or not accepted by the Government.

(f) *Flowdown Clause.* The contractor shall include in each subcontract which may involve a requirement for any printing/duplicating/copying a provision substantially the same as this clause.

(End of clause)

[FR Doc. 2013-08922 Filed 4-16-13; 8:45 am]

**BILLING CODE 6560-50-P**

<sup>1</sup> Pursuant to the July 2008 guidance *Promotional Communications for EPA*, a thumb drive can be used as a promotional item, but it also must be an information medium in itself. Namely, it must have substantive EPA information already loaded into the drive. Due to its intrinsic material value, it may not be used simply or primarily to display an EPA message on the exterior of the drive.

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Parts 107 and 171

[Docket No. PHMSA–2012–0257 (HM–258)]

RIN 2137–AE96

#### Hazardous Materials: Revision of Maximum and Minimum Civil Penalties

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** PHMSA is revising the references in its regulations to the maximum and minimum civil penalties for a knowing violation of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. As amended in the “Moving Ahead for Progress in the 21st Century Act” (MAP–21), effective October 1, 2012, the maximum civil penalty for a knowing violation is now \$75,000, except that the maximum civil penalty is \$175,000 for a violation that results in death, serious illness, or severe injury to any person or substantial destruction of property. In addition, there is no longer a minimum civil penalty amount, except that the minimum civil penalty amount of \$450 applies to a violation relating to training.

**DATES:** *Effective Date:* April 17, 2013.

**FOR FURTHER INFORMATION CONTACT:** Deborah Boothe, Office of Hazardous Materials Safety, (202) 366–8553; or Joseph Solomey, Office of Chief Counsel, (202) 366–4400, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

#### SUPPLEMENTARY INFORMATION:

##### I. Civil Penalty Amendments

In Section 33010 of MAP–21 (Pub. L. 112–141, 126 Stat. 837 [July 6, 2012]), Congress revised the maximum and minimum civil penalties set forth in 49 U.S.C. 5123(a) for a knowing violation of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. These changes to the civil penalty amounts apply to violations occurring on or after October 1, 2012. Accordingly, PHMSA is revising the references to the maximum and minimum civil penalty amounts in its regulations to reflect the changes to

Section 5123 of the Federal hazardous material transportation law. In 49 CFR 107.329, Appendix A to subpart D of 49 CFR part 107, and 49 CFR 171.1, we are:

- Revising the maximum civil penalty from \$55,000 to \$75,000 for a person who knowingly violates the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law.
- Revising the maximum civil penalty from \$110,000 to \$175,000 for a person who knowingly violates the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law that results in death, serious illness, or severe injury to any person or substantial destruction of the property.

- Removing the current \$250 minimum civil penalty and revising the minimum penalty amount to \$450 for a violation related to training.

Because these revisions simply set forth changes in the law and are part of PHMSA’s general statements of agency policy and procedure, notice and comment is not necessary.

##### II. Rulemaking Analyses and Notices

###### A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal hazardous materials transportation law (49 U.S.C. 5101 et seq.). Section 5123(a) of that law provides civil penalties for knowing violations of Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. This rule revises the references in PHMSA’s regulations by (1) revising the maximum penalty amount for a knowing violation and a knowing violation resulting in death, serious illness, or severe injury to any person or substantial destruction of property to \$75,000 and \$175,000, respectively, and (2) removing the minimum penalty amount, except for the minimum penalty amount of \$450 for a violation related to training.

###### B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under Executive Orders 12866 and 13563. Accordingly, this final rule was not reviewed by the Office of Management and Budget (OMB). Further, this rule is not a significant regulatory action under the Regulatory Policies and Procedures of the DOT because it is limited to a ministerial act on which the agency has