sector licensees with respect to reimbursement, NTIA is repealing its regulations.

To the extent that NTIA must take action to implement the new reimbursement and relocation plan with respect to federal agencies, it will do so in consultation with the Interdepartment Radio Advisory Committee (IRAC),[4] the Federal Communications Commission, and the Office of Management and Budget. Any procedures developed during that process will appear in the NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management, which provides the rules governing federal agencies' use of the radio spectrum.[5]

III. Other Information

The Commercial Spectrum Enhancement Act repeals the statutory authorization for the Mandatory Reimbursement Rules thereby eliminating NTIA's authority to implement these rules. Thus, NTIA must repeal these rules. Under these circumstances, providing prior notice and an opportunity for public comment on whether to repeal these rules would serve no useful purpose. As a result, under authority at 5 U.S.C. § 553(b)(B), NTIA finds good cause to waive such procedures. Moreover, the rules have not been utilized since their promulgation, and thus, no federal agency's or private sector entity's interest will be adversely affected by their repeal. Further, and for the same reason, NTIA finds good cause pursuant to 553(d)(3) to waive the requirement of a 30-day delay in effect for this rule. Thus, this rule is effective February 9, 2005.

Executive Order 12866

The repeal of the Mandatory Reimbursement Rules is not a significant regulatory action as defined by Executive Order 12866.

Executive Order 13312

The repeal of the Mandatory Reimbursement Rules do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

As prior notice and an opportunity for public comment are not required under 5 U.S.C. § 553 or any other law, the analytical requirements of the Regulatory Flexibility Act are inapplicable. Thus, no regulatory flexibility analysis is required and none has been prepared.

Paperwork Reduction Act

This action contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Lists of Subjects in 47 CFR Part 301

Classified information, Communications common carriers, Communications equipment, Defense communications, Federal buildings and facilities, Radio, Satellites, Telecommunications.

PART 301—[REMOVED AND RESERVED]

For the reasons stated above, 47 CFR Chapter III is amended by removing and reserving Part 301 pursuant to authority contained in Pub. L. No. 108–494.

Dated: February 4, 2005.

Michael D. Gallagher,

Assistant Secretary for Communications and Information Administration.

[FR Doc. 05–2514 Filed 2–8–05; 8:45 am]

BILLING CODE 3510–60–S

[4] The IRAC is an advisory commmittee comprised of the federal agencies using the radio spectrum. The IRAC provides spectrum management advice and support to the Assistant Secretary for Communications and Information and NTIA Administrator.

[5] The NTIA Manual is available on NTIA's website at http://www.ntia.doc.gov/osmhome/redbook/redbook.html.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2004–18905; Notice 2]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petitions for reconsideration.

SUMMARY: This notice denies petitions for reconsideration submitted by the Alliance of Automobile Manufacturers (Alliance) of the August 20, 2004, final rule on advanced air bag provisions in the occupant crash protection standard. We are denying the first petition because it references a test procedure that the agency has not yet proposed, for which an effective date will be proposed when a Lower Anchors and Tethers for Children (LATCH) seat installation procedure is published. We are denying the second petition because we have previously responded to the same issue and no new data have been presented.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Louis Molino, Office of Crashworthiness Standards, at (202) 366–2264. Fax: (202) 493–2739. *For legal issues:* Christopher Calamita, Office of Chief Counsel, at (202) 366–2992. Fax: (202) 366–3820. You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant crash protection, specifies performance requirements for the protection of vehicle occupants in crashes (49 CFR 571.208). On May 12, 2000, we published an interim final rule that amended FMVSS No. 208 to require advanced air bags (65 FR 30680; Docket No. NHTSA 00–7013; Notice 1) (Advanced Air Bag Rule). Among other things, the rule addressed the risk of serious air bag-induced injuries, particularly for small women and young children, and amended FMVSS No. 208 to require that future air bags be designed to minimize such risk. The Advanced Air Bag Rule established a rigid barrier crash test with a 5th percentile adult female test dummy, as well as several low risk deployment and out-of-position (OOP) tests using a range of dummy sizes and a number of specified child restraint systems (CRSs).

The agency received multiple petitions for reconsideration to the Advanced Air Bag Rule. Petitioners raised a large number of concerns about the various test procedures in their written submissions. To address these issues adequately, the agency held a technical workshop so that we could better understand the specific concerns and better determine if the test procedures needed refinement.[1] The

[1] The workshop was held on December 6, 2000, at NHTSA's Vehicle Research and Test Center in East Liberty, Ohio. Representatives of 18 vehicle manufacturers and 13 seat, sensor, and dummy manufacturers attended the workshop. Five different vehicles were used as test vehicles. Some of the five had been provided by manufacturers

Continued

agency then addressed each petition in a **Federal Register** notice published on December 18, 2001, and made several changes to the Advanced Air Bag Rule (66 FR 65376; Docket No. NHTSA 01–11110). These changes included a number of refinements to the test dummy positioning procedures in the barrier tests and the low risk deployment tests. The December 2001 final rule also amended the list of CRSs contained in Appendix A by removing from the list CRSs no longer in production, and adding other CRSs.

On November 19, 2003, the agency published a final rule that responded, in part, to petitions for reconsideration of the amendments made in the December 2001 final rule (68 FR 65179; Docket No. NHTSA 03–16476, Notice 1). Various seat and dummy positioning procedures were amended. The November 19, 2003, final rule also amended the list of CRSs in Appendix A. Specifically, effective September 1, 2004, we removed three rear-facing CRSs from Subpart B of the appendix and added two LATCH compliant CRSs to Subpart C. The preamble to the final rule also addressed the issue of lead time for changes to Appendix A.

On August 20, 2004, the agency published a final rule that responded to petitions for reconsideration of the amendments made in the November 19, 2003, final rule (69 FR 51598; Docket No. NHTSA 04–18905). The majority of the petitions were denied. However, we clarified two detailed points related to dummy positioning in OOP tests and extended the effective date for the LATCH seats added to Appendix A to September 1, 2006.

II. Petitions for Reconsideration

A. Effective Date Revision—Appendix A

The Alliance petitioned ''NHTSA to provide at least 1-year of lead time between the issuance of a compliance test procedure and the effective date of changes to Appendix A that would add child restraints equipped with LATCH lower attachments.'' While the Alliance strongly supports the development of a procedure for the installation of LATCH seats, as stated in the Alliance petition on the November 19, 2003, final rule, it contended that ''artificially tight installations of LATCH equipped child restraints in a compliance test could cause some occupant classification systems to misclassify the child restraint (but not in typical real-world usage).'' The petition stated that ''vehicle manufacturers and their suppliers need substantial lead-time to evaluate their systems and potentially redesign and incorporate into production suppression systems that can meet the test procedures that are to be developed.''

B. Future Appendix A Revisions

In addition, the Alliance petitioned NHTSA to provide at least two years of lead time for any future revisions to Appendix A. The Alliance expects that there will be a major update of the Appendix to add many LATCH-equipped CRSs. The Alliance stated that ''at least 2-years of lead time would help vehicle manufacturers and their suppliers to design and develop suppression systems that will meet the LATCH compliance test procedures that are to be developed.''

III. Response to Petitions

A. Effective Date Revision—Appendix A

We are denying the Alliance petition for one year of lead time between the issuance of a LATCH CRS installation compliance test procedure and the effective date of changes to Appendix A that would add CRSs equipped with LATCH lower attachments. In the August 20, 2004, final rule (69 FR 51598) the agency stated:

> To ensure the robustness of automatic suppression systems, a manufacturer must be able to certify that the system operates under conditions representative of real world use. This includes operation when used with CRS designs that have been sold for almost two years. However, as the Alliance noted, the agency does not yet have a compliance test procedure in place for testing seats installed by means of the LATCH anchorages. Therefore, the effective date for the LATCH equipped CRSs in Appendix A is extended until September 1, 2006. By that time, the agency will have developed a compliance test procedure for securing a LATCH-equipped CRS to a vehicle using the lower anchor attachments.

We are denying the petition because it presupposes that the agency will not publish a test procedure in a time sufficient to allow ample notice and lead time. When the Notice of Proposed Rulemaking (NPRM) for the LATCH procedure is issued, the agency will have an opportunity to propose an effective date of the procedure or of the CRSs to which the procedure would apply. To do this in advance of the NPRM publication is premature.

B. Future Appendix A Revisions

We are also denying the Alliance petition to provide at least two years of lead time for any future proposed revisions to Appendix A. In the December 18, 2001, final rule we noted that, generally, a 1-year lead time will be provided for amendments to Appendix A, but stressed the importance of establishing a list that is representative of real world usage (66 FR 65390). In response to the December 18, 2001, final rule, Mitsubishi petitioned the agency for a 2-year lead time for additions to Appendix A. In the preamble to the November 19, 2003, final rule the agency provided an extensive discussion of the lead time for additions to Appendix A (68 FR 65188).

> Additionally, the one year lead time is consistent with the agency's intent that occupant detection systems be robust and able to detect any CRS, including those that are relatively new to the market. However, in recognition that manufacturers need to know what CRSs will be included as they design their new models, we have decided to slightly change our position on lead time by making any changes to Appendix A effective for the next model year introduced one year after publication of the final rule modifying Appendix A. (Consistent with our past practice, for this purpose, the model year begins on September 1 of the prior calendar year.) This will result in a one to two year lead time. For example, if Appendix A were updated March 1, 2004, the revised appendix would become effective September 1, 2005, a period of eighteen months after publication. We believe this approach will allow manufacturers to tie their certification to the automatic suppression requirements with the introduction of a new model year.

Therefore, the agency has committed to providing at least one year of lead time, plus any additional time up to the next September 1st, so as to have the requirements to assure compliance using the new CRSs become effective at the beginning of a model year. The current petition for reconsideration for two years of lead time provides no new information that would cause the agency to reconsider our position on this issue.

IV. Conclusion

NHTSA received two petitions for reconsideration to the August 20, 2004, FMVSS No. 208 final rule from the Alliance. The Alliance requested that any lead time between the issuance of a compliance test procedure to install LATCH seats and the effective date of changes to Appendix A be at least one year. They further requested a two year lead time for any future revision to Appendix A. We are denying these petitions.

The first petition is denied as premature, since the agency can and will propose an appropriate lead time when the LATCH test procedure is published. The second petition is denied because NHTSA addressed the exact same issue in the preamble to the November 19, 2003, final rule, and no new data have been presented that

because they were experiencing particular problems with the existing test procedures in those vehicles.

would lead us to change our previous determination.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: February 3, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–2469 Filed 2–8–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–5025–18; I.D. 020205H]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,415 square nautical miles (nm^2) (4,853.3 km^2), east of Portsmouth, NH for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours February 11, 2005, through 2400 hours February 25, 2005.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On January 30, 2005, an aerial survey reported a sighting of four right whales in the proximity 43°07′ N. lat. and 68°35′ W. long. This position lies east of Portsmouth, NH. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule. The DAM zone is bounded by the following coordinates:

43° 26′N., 69° 01′W. (NW Corner)
43° 26′N., 68° 10′W.
42° 48′N., 68° 10′W.
42° 48′N., 69° 01′W.

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: A portion of this DAM zone overlaps with the Northeast multispecies' Cashes Ledge Closure Area and the Harbor Porpoise Take Reduction Plan's Offshore Closure Area. This DAM action does not supersede the multispecies closures found at 50 CFR 648.81 or the Harbor Porpoise Take