

agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. As discussed above, all OC-SCBA models are equipped with a remaining service-life indicator that will not require any expenditure of resources to set at the proposed alarm limit. This proposed rule will allow small organizations such as local fire departments to specify their desired indicator limit when purchasing new devices from the manufacturer. The Secretary of HHS has certified to the Chief Counsel, Office of Advocacy of the Small Business Administration, that this rule does not have a significant impact on a substantial number of small entities. Accordingly, no regulatory impact analysis is required.

#### C. Paperwork Reduction Act of 1995

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, requires an agency to invite public comment on and to obtain OMB approval of any regulation that requires 10 or more people to report information to the agency or to keep certain records. This rule does not contain any information collection requirements; thus HHS has determined that the PRA does not apply to this rule.

#### D. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), HHS would report to Congress the promulgation of a final rule, once it is developed, prior to its taking effect. The report would state that HHS has concluded that the rule is not a "major rule" because it is not likely to result in an annual effect on the economy of \$100 million or more.

#### E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector "other than to the extent that such regulations incorporate requirements specifically set forth in law." For purposes of the Unfunded Mandates Reform Act, this proposed rule does not include any Federal mandate that may result in increased annual expenditures in excess of \$100 million by state, local or tribal governments in the aggregate, or by the private sector, adjusted annually for inflation. For 2011, the inflation-adjusted threshold is \$136 million.

#### F. Executive Order 12988 (Civil Justice)

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The proposed amendment to an existing respirator approval standard would apply uniformly to all applicants. This proposed rule has been reviewed carefully to eliminate drafting errors and ambiguities.

#### G. Executive Order 13132 (Federalism)

HHS has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The proposed rule does 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."

#### H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this proposed rule on children. HHS has determined that the proposed rule would have no effect on children.

#### I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this proposed rule on energy supply, distribution, or use and has determined that the rule will not have a significant adverse effect.

#### J. Plain Writing Act of 2010

Under Public Law 111-274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS has attempted to use plain language in promulgating the proposed rule consistent with the Federal Plain Writing Act guidelines.

### V. Proposed Rule

#### List of Subjects in 42 CFR Part 84

Occupational safety and health, Personal protective equipment, Respirators.

### Text of the Rule

For the reasons discussed in the preamble, the Department of Health and Human Services proposes to amend 42 CFR Part 84 as follows:

#### PART 84—APPROVAL OF RESPIRATORY PROTECTIVE DEVICES

1. The authority citation for Part 84 continues to read as follows:

**Authority:** 29 U.S.C. 577a, 651 *et seq.*, and 657(g); 30 U.S.C. 3, 5, 7, 811, 842(h), 844.

#### § 84.83 [Amended]

2. Amend § 84.83 as follows:  
a. Revise paragraph (f) to read as follows:

#### § 84.83 Timers; elapsed time indicators; remaining service life indicators; minimum requirements.

\* \* \* \* \*

(f) Each remaining service-life indicator or warning device shall give an alarm when the reserve capacity of the apparatus is reached, and shall alarm continuously until depletion of the breathing air supply. The remaining service-life indicator shall be set by the manufacturer at 25 percent rated service time unless requested by purchasers to set the indicator to alarm at a higher value. For deployed units, the remaining service-life indicator may be set by an authorized representative of the manufacturer.

Dated: June 11, 2012.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2012-14764 Filed 6-22-12; 8:45 am]

**BILLING CODE 4163-18-P**

### NATIONAL TRANSPORTATION SAFETY BOARD

#### 49 CFR Chapter VIII

[Docket No. NTSB-GC-2012-001]

#### Plan for Retrospective Analysis of Existing Rules

**AGENCY:** National Transportation Safety Board (NTSB).

**ACTION:** Request for information.

**SUMMARY:** Pursuant to Executive Order 13579, "Regulation and Independent Regulatory Agencies," issued July 11, 2011, the NTSB is announcing it is undertaking a review of all NTSB regulations. The purpose of Executive Order 13579 is to ensure all agencies adhere to the key principles found in Executive Order 13563, "Improving Regulation and Regulatory Review,"

issued January 18, 2011, which include promoting public participation in rulemaking, improving integration and innovation, promoting flexibility and freedom of choice, and ensuring scientific integrity during the rulemaking process in order to create a regulatory system that protects public health, welfare, safety, and the environment while promoting economic growth, innovation, competitiveness, and job creation. The NTSB is committed to ensuring its regulations remain updated and comply with these principles, and in accordance with Executive Order 13579, will review all NTSB regulations to ensure adherence to the principles. This notice describes the plan of review the NTSB will undertake.

**DATES:** Comments should be received on or before August 24, 2012. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit written comments to Docket NTSB–GC–2012–001 by any of the following methods:  
*Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

*Mail, Hand Delivery or Courier:* NTSB Office of General Counsel, 490 L'Enfant Plaza, Washington, DC 20594.

*Fax:* (202) 314–6090.

**FOR FURTHER INFORMATION CONTACT:**

David Tochen, NTSB General Counsel, at (202) 314–6080.

**SUPPLEMENTARY INFORMATION:**

**I. Executive Order 13579**

In order to ensure independent agencies' regulations are consistent with the key principles articulated in Executive Order 13563 (76 FR 3821, January 21, 2011), Executive Order 13579 (76 FR 41587, July 14, 2011) requests independent agencies issue public plans for periodic retrospective analysis of their existing "significant regulations." The executive order further advises agencies to undertake such analyses to identify any significant regulations that may be outmoded, ineffective, insufficient, or excessively burdensome, and subsequently plan to modify, streamline, expand, or repeal them in order to achieve regulatory objective. Executive Order 13563 also emphasized the importance of maintaining a consistent culture of retrospective review and analysis by agencies of their regulatory programs. In this regard, the executive order included a "look-back" requirement for agencies to develop preliminary plans under which they will periodically review existing significant regulations to

determine whether any should be modified, streamlined, expanded or repealed in order to make the agency's regulations more effective and less burdensome.

In a more recent Executive Order, the President directed Executive departments and agencies to allow for public participation in retrospective reviews; prioritize their reviews by first addressing the regulations that will provide the most significant monetary savings or in reductions in paperwork burdens; and regularly report the status of retrospective reviews to OIRA. Executive Order 13610, "Identifying and Reducing Regulatory Burdens," issued May 10, 2012, (77 FR 28469, May 14, 2012).

As described above, Executive Order 13579 encourages independent agencies to review "significant regulations"; however, the executive order does not define what agencies should consider to be "significant regulations." The NTSB has therefore decided to utilize the definition of a "significant regulatory action" provided in Executive Order 12866 ("Regulatory Planning and Review"), which is the executive order that established the current regulatory review structure.<sup>1</sup> Consistent with the approach other independent agencies have taken, the NTSB also considered the definition of "major rules" in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, 5 U.S.C. 801(e)(2)) to guide our review of what regulations might be "significant" under the executive order. In this regard, 5 U.S.C. 610(a) provides for a 10-year review of rules that have a "significant economic impact upon a substantial number of small entities." The NTSB, however, has determined that a very limited number of the NTSB's rules are "major rules," because they do not have a "significant economic impact upon a substantial number of small entities." In addition, the NTSB is not primarily a regulatory agency; as a result, its regulations typically address procedures to further the agency's statutory responsibilities to

<sup>1</sup> 58 FR 51735, October 4, 1993. Section 3(f) of Executive Order 12866 defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel, legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

investigate the facts, circumstances, and cause of transportation accidents or implement governmentwide statutes, such as the Freedom of Information Act and the Privacy Act. This plan, therefore, describes only the NTSB regulations that could, when viewed in the broadest sense, have a significant economic impact upon a substantial number of small entities.

**II. The NTSB's Plan**

The NTSB has recently taken action on some parts of its regulations. For example, the NTSB finalized a new version of 49 CFR part 801 (Public Availability of Information) in 2007 (72 FR 18915, April 16, 2007); rescinded out-of-date regulations in 49 CFR part 805 (Employee Responsibilities and Conduct) in 2011 (76 FR 71910, November 21, 2011); issued some changes and additions to two sections within 49 CFR part 830 (notification and reporting of aircraft incidents and accidents) (75 FR 927, January 7, 2010; 75 FR 35330, June 22, 2010); and, most recently, issued a Notice of Proposed Rulemaking subsequent to an Advance Notice of Proposed Rulemaking suggesting several changes to 49 CFR parts 821 (Rules of Practice in Air Safety Proceedings) and 826 (Rules Implementing the Equal Access to Justice Act of 1980) (77 FR 6760, February 9, 2012). The NTSB undertook these rulemaking activities after noting many of the rules in the parts described above were out-of-date. None of these aforementioned parts, however, contain regulations that are "significant" under Executive Order 12866.

**Review of 49 CFR Part 831**

The NTSB has identified one regulatory portion that may contain "significant regulations" pursuant to the definition contemplated above: 49 CFR part 831. This part, entitled "Accident/ Incident Investigation Procedures," contains a set of 14 sections describing the NTSB's "party process." This process involves the NTSB's invitation to outside entities to assist with an investigation as a "party." The NTSB typically extends party status to those organizations that can provide the necessary technical assistance to the investigation. The investigator-in-charge (IIC), for example, often confers party status to the operator, aircraft, systems, and powerplant manufacturers, and labor organizations involved because of the accident circumstances. The IIC designates all other parties as participants, subject to the discretion of the IIC, with the exception of the Federal Aviation Administration (FAA). By statute, the FAA is automatically a

participant in Safety Board investigations. 49 U.S.C. 1132(c). The role of the FAA representatives is to support the Safety Board's investigation and determine if immediate regulatory action is necessary to prevent another accident. The NTSB directs FAA representatives to refrain from using their participation to develop information for punitive actions or issuing violations.

The parties involved in NTSB investigations could be small entities, and, depending on the scope and circumstances of the investigation, the NTSB could request these small entities to be available for the on-scene portion of an investigation, as well as follow-up meetings and/or tasks. The NTSB does not reimburse investigation participants for the amount of time expended for an NTSB investigation, nor does the NTSB pay for any travel costs that arise out of such participation. As a result, it is remotely possible that a combination of NTSB investigations could result in costs that exceed \$100 million.

#### Biennial Review

Although this interpretation of 49 CFR part 831 as containing "significant regulatory actions" is based on a broad reading of "significant," and the NTSB has not yet overseen any investigations that singly or in combination exceed the aforementioned threshold, the NTSB nevertheless is committed to reviewing its regulations within 49 CFR part 831, in the interest of ensuring none are "outmoded, ineffective, insufficient, or excessively burdensome" under Executive Orders 13563 and 13579. In this regard, the NTSB herein proposes to review 49 CFR part 831 within the next 6 months to determine if any sections within part 831 could be modified, streamlined, expanded, or repealed, pursuant to the direction of Executive Order 13579. The NTSB's findings will form the basis for the NTSB's decision concerning whether the NTSB should make any changes to part 831. The NTSB is committed to issuing a Notice of Proposed Rulemaking within 6 months of the published findings, should the findings counsel in favor of changing any sections of part 831.

After the conclusion of any rulemaking activity, the NTSB will undertake a biennial review of part 831 to ensure no regulations are outmoded, ineffective, insufficient, or excessively burdensome. If the NTSB determines no changes to part 831 are necessary, the NTSB will begin computing time for its biennial review following the date of its publication of findings. The NTSB believes review on a biennial basis is appropriate for the subject matter

contained in part 831, as the NTSB's party process is familiar to regular party participants, and party participants have not articulated concerns with the process that would warrant a change in regulations.

Following each biennial review, the NTSB will make its findings available for public comment, providing an opportunity for public input as to which of the regulations that are ripe for evaluation warrant a formal public review. This input, in addition to the NTSB's recommendation, will inform the NTSB's decision as to which regulations will be the subject of a formal public review. This public review could be initiated by a notice seeking public comment on whether the regulations continue to meet their original objectives or by a proposal of specific changes to the regulations.

#### Cultural Change

As indicated by the number of recent rulemaking activities, the NTSB is committed to developing a strong culture of retrospective analysis of its existing regulations. The NTSB currently is undertaking a review of other regulations that would not be considered "significant," in which it is examining regulations to ensure they continue to be appropriate to meet the goal of the regulations without imposing an undue burden. In addition, the NTSB will seek to expand its effort to conduct regulatory reform and to make suggestions to modify, improve, or repeal regulations that may further the purpose of Executive Orders 13563, 13579, and 13610. The NTSB also encourages public comment on any of its regulations in title 49, Code of Federal Regulations, chapter VIII, in addition to 49 CFR part 831, consistent with the objectives of these Executive Orders. The NTSB will also consider the spirit of these Executive Orders when evaluating possible new regulations. With this change in the overall outlook concerning its regulations, the NTSB believes it will achieve the general objectives of these Executive Orders with regard to every part of its regulations, notwithstanding the fact that the vast majority of them are not "significant" under Executive Order 12866.

Dated: June 19, 2012.

**Deborah A.P. Hersman,**  
Chairman.

[FR Doc. 2012-15327 Filed 6-22-12; 8:45 am]

**BILLING CODE 7533-01-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 226

[Docket No. 110207102-2084-02]

RIN 0648-BA81

#### Endangered and Threatened Wildlife and Plants; Proposed Rulemaking To Revise Critical Habitat for Hawaiian Monk Seals

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

**ACTION:** Proposed rule; notice of 6-month extension of the deadline for a final critical habitat determination.

**SUMMARY:** We, National Marine Fisheries Service (NMFS), published a proposed rule in the **Federal Register** on June 2, 2011, proposing to revise critical habitat for the Hawaiian monk seal under the Endangered Species Act (ESA) and requesting information related to the proposed action. This document announces a 6-month extension of the deadline for a final determination on the proposed rule. Based on comments received during the public comment period, we find that substantial disagreement exists regarding the sufficiency and accuracy of the data and analyses used to support the scope of the proposed critical habitat designation in the Main Hawaiian Islands. Accordingly, we are extending the deadline for the final revision to critical habitat for the Hawaiian monk seal an additional 6 months to further analyze data and consider concerns raised by State, Federal, and other entities, and better inform our determinations for the final revision of Hawaiian monk seal critical habitat under the ESA.

**DATES:** A final revision will be made no later than December 2, 2012.

**ADDRESSES:** The proposed rule, maps, and other materials relating to this proposal can be found on the NFMS Pacific Island Region's Web site at [http://www.fpir.noaa.gov/PRD/prd\\_critical\\_habitat.html](http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html).

**FOR FURTHER INFORMATION CONTACT:** Jean Higgins, NMFS, Pacific Islands Regional Office, (808) 944-2157; Lance Smith, NMFS, Pacific Islands Regional Office, (808) 944-2258; or Dwayne Meadows, NMFS, Office of Protected Resources (301) 427-8403.

**SUPPLEMENTARY INFORMATION:**