paragraph and § 1.861–12T(c)(2)) in the stock of the redeeming corporation). These adjustments are to be made annually and are noncumulative.

(vii) *Examples.* Certain of the rules of this paragraph (c)(2) may be illustrated by the following examples:

Examples 1 and *2.* [Reserved]. For further guidance, see § 1.861–12T(c)(2)(vii), *Examples 1* and *2.*

Example 3. X, an unaffiliated domestic corporation that was organized on January 1, 2000, owns all of the stock of Y, a foreign corporation with a functional currency other than the U.S. dollar since January 1, 2000. The Y stock held by X includes Class A and Class B common stock. X's adjusted basis in the Class A and Class B common stock is $25,000 and $50,000, respectively. Y has earnings and profits for the 2008 taxable year of $40,000. During the 2008 taxable year, Y redeems all of the Class A common stock held by X for $40,000. Because X still owns all of the outstanding stock of Y, the redemption is treated as a distribution with respect to the stock of Y under section 301. Under § 1.302–5(a)(3), X's $ 25,000 adjusted basis in the redeemed shares of Class A common stock is treated as a loss recognized on the date of the redemption, none of which is taken into account in 2008. Under paragraph (c)(2)(vi) of this section, solely for purposes of apportioning expenses on the basis of the tax book value of assets, X's adjusted basis in its remaining Class B common stock of Y is considered to be $75,000 ($50,000 adjusted basis in the Class B common stock plus $ 25,000 unrecovered basis in the redeemed Class A common stock).

(c)(2)(viii) *Effective/applicability date.* Paragraph (c)(2)(vi) and *Example 3* apply to transactions that occur after the date these regulations are published as final regulations in the **Federal Register**.

(c)(3) through (j) [Reserved]. For further guidance, see § 1.861–12T(c)(3) through (j).

§ 1.1002–1 [Redesignated as § 1.1001–6]

Par. 18. Section 1.1002–1 is redesignated as 1.1001–6 and amended by revising paragraph (c) and adding a new paragraph (e) to read as follows:

§ 1.1001–6 Sales or exchanges.

* * * * *

(c) *Certain exceptions to general rule.* Exceptions to the general rule are made, for example, by sections 351(a), 354, 361(a), 721, 1031, 1035, and 1036. These sections describe certain specific exchanges of property in which at the time of the exchange particular differences exist between the property parted with and the property acquired, but such differences are more formal than substantial. As to these, the Internal Revenue Code provides that such differences shall not be deemed controlling, and that gain or loss shall not be recognized at the time of the exchange. The underlying assumption of these exceptions is that the new property is substantially a continuation of the old investment still unliquidated; and, in the case of reorganizations, that the new enterprise, the new corporate structure and the new property are substantially continuations of the old still unliquidated. Solely for purposes of determining whether the exceptions to the general rule under sections 354 and 361 apply to an exchange, to the extent the terms of the exchange specify that a particular property is received in exchange for a particular property, such terms shall control provided such terms are economically reasonable.

* * * * *

(e) *Effective/applicability date.* This section applies to exchanges that occur after the date these regulations are published as final regulations in the **Federal Register**. For exchanges that occur on or before the date these regulations are published as final regulations in the **Federal Register**, see this section as contained in 26 CFR part 1 revised April 1, for the year before these regulations are published as final regulations in the **Federal Register**.

Par. 19. Section 1.1016–2 is amended by adding paragraphs (e) and (f) to read as follows:

§ 1.1016–2 Items properly chargeable to capital account.

* * * * *

(e) Solely for purposes of determining basis in stock, in the case of a shareholder capital contribution to which section 118 applies, the principles of § 1.358–2(g)(3) (allocation of basis in a section 351 transaction in which stock is deemed received) shall apply.

(f) This section applies to transactions that occur after the date these regulations are published as final regulations in the **Federal Register**. For exchanges that occur on or before the date these regulations are published as final regulations in the **Federal Register**, see this section as contained in 26 CFR part 1 revised April 1, for the year before these regulations are published as final regulations in the **Federal Register**.

Par. 20. Section 1.1374–10, the first sentence of paragraph (a) is revised to read as follows:

§ 1.1374–10 Effective date and additional rules.

(a) *In general.* For transactions to which § 1.302–5 applies [Reserved]. Sections 1.1374–1 through 1.1374–9, other than § 1.1374–3(b) and (c) *Examples 2* through *4,* apply for taxable years ending on or after December 27, 1994, but only in cases where the S corporation's return for the taxable year is filed pursuant to an S election or a section 1374(d)(8) transaction occurring on or after December 27, 1994. * * *

* * * * *

Linda M. Kroening,

(Acting) Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–1100 Filed 1–16–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2007–0007]

RIN 1218–AC39

Additional Quantitative Fit-Testing Protocols for the Respiratory Protection Standard

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: OSHA is proposing to add two PortaCount® quantitative fit-testing protocols to its Respiratory Protection Standard (29 CFR 1910.134); the proposed protocols would apply to employers in general industry, shipyard employment, and the construction industry. The first of the two proposed protocols consists of the eight fit-testing exercises described in Part I.A.14 of Appendix A of the Respiratory Protection Standard, except each exercise would last 30 seconds instead of the currently required 60 seconds.[1] The second proposed protocol would eliminate two of the eight fit-testing exercises, and each of the remaining six exercises would last 40 seconds; in addition, this proposed protocol would increase the current minimum pass-fail fit-testing criterion from a fit factor of 100 to 200 for half masks, and from 500 to 1,000 for full facepieces.

DATES: Submit comments to this proposal, including comments to the information collection (paperwork) determination described under the section this preamble titled **SUPPLEMENTARY INFORMATION**, as well as

[1] Except for the grimace exercise, which currently lasts 15 seconds and would remain at 15 seconds in both of the proposed protocols. However, neither the current nor proposed protocols include the fit factor obtained from this exercise in determining the overall fit factor for a respirator tested using a quantitative fit test.

other information, by March 23, 2009. All submissions must bear a postmark or provide other evidence of the submission date. (*See* the following section titled **ADDRESSES** for methods used in submitting comments to the docket.)

ADDRESSES: Submit comments, identified by docket number OSHA–2007–0007 or regulatory information number (RIN) 1218–AC39, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 693–1648 for comments that are 10 pages or fewer in length (including attachments). Instead of transmitting facsimile copies of attachments that supplement these comments (*e.g.*, studies, journal articles), commenters may submit these attachments, in triplicate hard copy, to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number or RIN number (*i.e.*, OSHA–2007–0007 or 1218–AC39, respectively) so that the Agency can attach them to the appropriate comments.
- *Mail, Hand Delivery, or Courier (for Paper, Disk, or CD–ROM Submissions):* OSHA Docket Office, Docket No. OSHA–2007–0007 or RIN No. 1218–AC39, Technical Data Center, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.
- *Instructions:* All submissions must include the agency name and the docket number or RIN number (*i.e.*, OSHA–2007–0007 or 1218–AC39, respectively) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instruction on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and/or to the OSHA Docket Office in Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. The *http://www.regulations.gov* index lists the documents in the docket; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

- *General information and press inquiries:* Contact Ms. Jennifer Ashley, Director, Office of Communications, OSHA, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–1999; *facsimile:* (202) 693–1634.
- *Technical inquiries:* Contact Mr. John Steelnack, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–2289; *facsimile:* (202) 693–1678.
- *Copies of this* **Federal Register** *notice:* Electronic copies of this **Federal Register** notice, news releases, and other similar documents are available on OSHA's Web page at *http://www.osha.gov* (select ''**Federal Register**,'' ''Date of Publication,'' and then ''2008'').

SUPPLEMENTARY INFORMATION:

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I. Background

Appendix A of OSHA's Respiratory Protection Standard at 29 CFR 1910.134 currently includes three quantitative fit-testing protocols using the following challenge agents: A non-hazardous generated aerosol such as corn oil, polyethylene glycol 400, di-2-ethyl hexyl sebacate, or sodium chloride; ambient aerosol; and controlled negative pressure. Appendix A of the Respiratory Protection Standard also specifies the procedure for adding new fit-testing protocols to this standard. The criteria for determining whether OSHA must publish a fit-testing protocol for notice-and-comment rulemaking under Section 6(b)(7) of the Occupational Safety and Health Act of 1970 (the ''Act'') (29 U.S.C. 655) include: (1) A test report prepared by an independent government research laboratory (*e.g.*, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, the National Institute for Standards and Technology) stating that the laboratory tested the protocol and found it to be accurate and reliable; or (2) an article published in a peer-reviewed industrial-hygiene journal describing the protocol and explaining how the test data support the protocol's accuracy and reliability. Using this procedure, OSHA has added one fit-testing protocol (*i.e.*, the controlled negative pressure REDON quantitative fit-testing protocol) to Appendix A of its Respiratory Protection Standard (see 69 FR 46986).

II. Summary and Explanation of the Proposal

A. Introduction

In the letter submitting two new quantitative fit-testing protocols for review under the provisions of Appendix A of OSHA's Respiratory Protection Standard (Ex. OSHA–2007–0007–0002), Mr. Jeff Weed of TSI Inc. included a copy of a peer-reviewed article from an industrial-hygiene journal describing the accuracy and reliability of these proposed protocols (Ex. OSHA–2007–0007–0003).[2] The submission letter also included instructions that described in detail the equipment and procedures required to administer the proposed protocols. According to this description, the proposed protocols are variations of the existing ambient-aerosol condensation-nuclei-counter quantitative fit-testing protocol developed by TSI Inc., in the 1980's, commonly referred to as the standard PortaCount® quantitative fit-testing protocol (hereafter, ''the standard PortaCount® QNFT protocol''). OSHA included the standard PortaCount® QNFT protocol in Appendix A of its final Respiratory Protection Standard.

[2] This letter and the accompanying article describe three fit-testing protocols, but Mr. Weed of TSI Inc., in a subsequent telephone call to OSHA staff, requested that the Agency include only two of them in this proposed rulemaking.

(For consistency, OSHA will refer to the two proposed protocols as ''revised PortaCount® quantitative fit-testing protocols 1 and 2'' (*i.e.*, ''revised PortaCount® QNFT protocols 1 and 2'').

The proposed protocols use the same fit-testing requirements and instrumentation specified for the standard PortaCount® QNFT protocol in paragraphs (a) and (b) of Part I.C.3 of Appendix A of the Respiratory Protection Standard, with the following exceptions:

- Revised PortaCount® QNFT protocol 1 reduces the duration of the eight fit-testing exercises from 60 seconds to 30 seconds; and
- Revised PortaCount® QNFT protocol 2 eliminates two of the eight fit-testing exercises, with each of the remaining six exercises having a duration of 40 seconds; in addition, this proposed protocol increases the current minimum pass-fail fit-testing criterion from a fit factor of 100 to 200 for half masks, and from 500 to 1,000 for full facepieces.

B. Summary of the Peer-Reviewed Article

Peer-reviewed industrial-hygiene journal article. The peer-reviewed article submitted by Mr. Jeff Weed of TSI Inc., entitled ''Evaluation of Three New Fit Test Protocols for Use with the TSI PortaCount,'' appeared in the Fall/Winter 2005 issue of the *Journal of the International Society for Respiratory Protection* (Ex. OSHA–2007–0007–0003). This article describes a study that determined whether performing the proposed protocols yields fit-testing results similar to results obtained with the standard PortaCount® QNFT protocol (*i.e.*, the standard PortaCount® QNFT protocol was the criterion measure or ''gold standard'').

Test subjects and respirator selection. The study involved 30 test subjects who performed 140 fit tests while wearing elastomeric half-mask and full-facepiece respirators equipped with P100 filters. The test subjects selected respirators from among 24 models, with some test subjects using more than one model during fit testing. Respirator fit varied across the test subjects, with 60 of 140 fit factors below 100, and 91 of 140 fit factors less than 500, as determined by the standard PortaCount® QNFT protocol.[3] Poor respirator fit resulted from improper respirator selection by the test subjects themselves, or from assigning respirators to test subjects that were either too small or too large. Test subjects could adjust the respirator for comfort, but they did not perform user seal checks.

Procedures. In conducting the study, the authors followed the recommendations for evaluating new fit-testing protocols specified by Annex A2 (''Criteria for Evaluating Fit Tests Methods'') of ANSI Z88.10–2001 (''Respirator Fit Testing Methods''). Specially designed testing software allowed for calculation of fit factors every 10 seconds during the in-mask sampling periods without disturbing the facepiece (*i.e.*, at 10-, 20-, and 30-second intervals for comparison with the 40-second in-mask sampling intervals determined using the standard PortaCount® QNFT protocol). The authors used TSI-supplied sampling adaptors, or respirators with fixed probes provided by the respirator manufacturer, to collect samples inside the respirators. The sampling point inside the respirator was between the nose and the mouth. During sampling, the test subjects performed the exercises listed in Part I.A.14 of Appendix A of OSHA's Respiratory Protection Standard, which include: initial normal breathing, deep breathing, turning the head side to side, moving the head up and down, reading a passage, grimace, bending over, and final normal breathing.

The TSI PortaCount® Plus fit-testing instrument performed particle counts on samples collected during the study. The table below provides the exercise and sampling parameters for each of the protocols used in the study.

Protocol	Number of exercises	Duration of each exercise (secs.)	In-mask sampling duration for each exercise (secs.) [1]
Standard PortaCount® QNFT Protocol	8	60	40
Revised PortaCount® QNFT Protocol 1	8	30	10
Revised PortaCount® QNFT Protocol 2	[2] 6	40	20

[1] Does not include 20 seconds for each exercise to collect ambient-air samples and to purge the in-mask and ambient-air sampling tubes.
[2] This protocol eliminated the initial normal-breathing exercise and the deep-breathing exercise.

Results. To pass a fit test using revised PortaCount® QNFT protocol 1, test subjects had to attain a fit factor of 100 for half masks and 500 for full-facepiece respirators; the pass-fail criteria for full-facepiece respirators using revised PortaCount® QNFT protocol 2 were 200 for half masks and 1,000 for full-facepiece respirators. Based on these criteria, the authors determined the following statistics for the two proposed protocols: test sensitivity; predictive value of a pass; test specificity; predictive value of a fail; and the kappa statistic. In calculating these statistics, the authors adopted the variables defined by ANSI Z88.10–2001, in which: A = false positives (passed the fit test with a fit factor < 100); B = true positives (passed the fit test with a fit factor ≥ 100); C = true negatives (failed the fit test with a fit factor < 100); D = false negatives (failed the fit test with a fit factor ≥ 100); P_o = observed proportion of the two fit tests that are concordant; and P_e = expected proportion of the two fit tests expected to be concordant when the two tests are statistically independent. Using these variables, ANSI Z88.10–2001 specifies the formula and recommended value (''RV'') for each statistic as follows: Test sensitivity = C/(A + C), RV ≥ 0.95; predictive value of a pass = B/(A + B), RV ≥ 0.95; test specificity = B/(B + D), RV > 0.50; predictive value of a fail = C/(C + D), RV > 0.50; and the kappa statistic = $(P_o - P_e)/(1 - P_e)$.

Using the standard PortaCount® QNFT protocol as the criterion measure, the variables for the two proposed protocols had values for half masks and full-facepiece respirators listed in the following two tables.

[3] After excluding from the analysis fit factors within one standard deviation of the reference fit-factor pass-fail criterion, these figures are 57 of 135 fit factors below 100, and 91 of 135 fit factors less than 500.

Variables	Values for half-mask respirators		
	ANSI requirement	Revised PortaCount® QNFT Protocol 1	Revised PortaCount® QNFT Protocol 2
Sensitivity	≥0.95	[1] 0.91	1.00
Predictive Value of a Pass	≥0.95	[2] 0.94	1.00
Specificity	>0.50	0.99	0.81
Predictive Value of a Fail	>0.50	0.98	0.79
Kappa Statistic	>0.70	0.91	0.78

[1] = Fail.
[2] = Borderline fail.

Variables	Values for full-facepiece respirators		
	ANSI requirement	Revised PortaCount® QNFT Protocol 1	Revised PortaCount® QNFT Protocol 2
Sensitivity	≥0.95	0.97	1.00
Predictive Value of a Pass	≥0.95	[1] 0.94	1.00
Specificity	>0.50	0.98	0.84
Predictive Value of a Fail	>0.50	0.99	0.92
Kappa Statistic	>0.70	0.94	0.87

[1] = Borderline fail.

For half masks, revised PortaCount® QNFT protocol 1 failed to meet the sensitivity value specified by ANSI Z88.10–2001, and, consistent with this failure, the value for the predictive-value-of-a-pass variable was marginal. However, for full-facepiece respirators, the sensitivity value for this proposed protocol exceeded the ANSI requirement, although the predictive-value-of-a-pass variable was again slightly below the ANSI specification. The failure of this proposed protocol to attain an adequate sensitivity value when applied to half masks indicates that, for half masks, the proposed protocol is susceptible to alpha, or false positive, error—*i.e.*, it would pass some half masks that would function below a fit factor of 100 when tested with the protocol used as the criterion measure (*i.e.*, the standard PortaCount® QNFT protocol). The authors did not provide an explanation for this deficiency. However, the deficiency is unlikely to be the result of statistical error because the number of test subjects appeared to be adequate, and a procedural or measurement error should have decreased the sensitivity value for revised PortaCount® QNFT protocol 2, which was not the case. Despite these problems, revised PortaCount® QNFT protocol 1 performed well above the values established by the ANSI standard for the three remaining variables, including specificity, predictive value of a fail, and the kappa statistic. These values indicate that the vast majority of the test subjects who passed (or failed) the criterion measure also passed (or failed) the proposed protocol, and the proposed protocol correlated highly with the criterion measure. Nonetheless, the fact that revised PortaCount® QNFT protocol 1 failed to meet the sensitivity value specified by ANSI Z88.10–2001 for half masks raises the question of whether it is as protective as the standard PortaCount® QNFT protocol, and OSHA has raised this as an issue for public comment (see below).

The variables for revised PortaCount® QNFT protocol 2 had sensitivity values for both half masks and full-facepiece respirators well in excess of the sensitivity value specified by the ANSI standard. The sensitivity values for this proposed protocol demonstrate that it identified 100% of the poorly fitting half masks and full-facepiece respirators. In addition, this proposed protocol performed well above the values listed in the ANSI standard for the four remaining variables, including predictive value of a pass, specificity, predictive value of a fail, and the kappa statistic. Consistent with the sensitivity values derived for this proposed protocol, these four values indicate that the proposed protocol resulted in fit factors that accurately identified half masks and full-facepiece respirators with acceptable and poor fits, and that these fit factors agreed closely with the fit factors attained from the criterion measure.

In discussing the results for revised PortaCount® QNFT protocol 2, the authors noted that excluding the two least strenuous fit-testing exercises (*i.e.*, the initial normal-breathing exercise and the deep-breathing exercise) from this proposed protocol was a conservative approach in that the proposed protocol was more likely than protocols consisting of eight fit-testing exercises to detect respirator leakage (*i.e.*, using data from less strenuous fit-testing exercises inappropriately inflates the overall fit factor for respirators, thereby increasing alpha error). Another conservative approach used by this proposed protocol was raising the pass-fail criterion for half masks from a fit factor of 100 to 200, and, for full-facepiece respirators, from 500 to 1,000. This approach likely enhanced the sensitivity of the proposed protocol. However, enhancing sensitivity may increase beta (false-negative) error, which would increase the number of repeated tests and, consequently, the total testing time required by some employees to identify a respirator having an acceptable fit.

C. Conclusions

OSHA believes that the information submitted by Mr. Weed in support of the proposed protocols meets the criteria for determining whether OSHA must publish fit-testing protocols for notice-and-comment rulemaking established by the Agency in Part II of Appendix A of its Respiratory Protection Standard. Therefore, the Agency concludes that the proposed protocols warrant notice-and-comment rulemaking under Section 6(b)(7) of the Act (29 U.S.C. 655), and is initiating this rulemaking to determine whether to approve these proposed protocols for inclusion in Part I of Appendix A of its Respiratory Protection Standard.

The only differences between the two proposed protocols and the standard PortaCount® QNFT protocol specified

currently in Part I.C.3 of Appendix A of the Respiratory Protection Standard are the duration of the exercises used during fit testing, and for revised PortaCount® QNFT protocol 2, the exclusion of the two least strenuous fit-testing exercises and the raising of the minimum passing criteria. Therefore, the Agency is proposing to add the proposed protocols to Part I.C.3 of Appendix A (see section IV of this preamble titled ''Proposed Amendment to the Standard''). In addition to decreasing exercise durations from 60 seconds to 30 or 40 seconds, the proposed revisions to the regulatory text would limit use of revised PortaCount® QNFT protocol 2 to respirator users who demonstrate a minimum passing criteria of 200 for half masks or 1,000 for full-facepiece respirators. If approved, the proposed protocols would be alternatives to the existing quantitative fit-testing protocols already listed in the Part I of Appendix A of the Respiratory Protection Standard; employers would be free to select these alternatives or to continue using any of the other protocols currently listed in the appendix.

D. Issues for Public Comment

OSHA invites comments and data from the public regarding the accuracy and reliability of the two proposed protocols, their effectiveness in detecting respirator leakage, and their usefulness in selecting respirators that will protect employees from airborne contaminants in the workplace. Specifically, the Agency invites public comment on the following issues:

- Was the study described in the peer-reviewed journal article well controlled, and conducted according to accepted experimental design practices and principles?
- Were the results of the study described in this article properly, fully, and fairly presented and interpreted?
- Will the proposed protocols generate reproducible fit-testing results?
- Will the proposed protocols reliably identify respirators with unacceptable fit as effectively as the quantitative fit-testing protocols, including the standard PortaCount® QNFT protocol, already listed in Part I.C.3 of Appendix A of the Respiratory Protection Standard?
- Is the test-sensitivity value of 0.91 obtained for half masks by revised PortaCount® QNFT protocol 1 acceptable in view of the test-sensitivity value of 0.95 required by ANSI Z88.10–2001. If not, would it be appropriate for OSHA to limit application of revised PortaCount® QNFT protocol 1 to full-facepiece respirators?
- The study evaluating the proposed protocols involved only elastomeric half-mask and full-facepiece respirators. Accordingly, is it appropriate to apply the results of the study to other types of respirators (*e.g.*, filtering-facepiece respirators)?

III. Procedural Determinations

A. Legal Authority

The purpose of the Occupational Safety and Health Act of 1970 (''the Act''; 29 U.S.C. 651 *et seq.*) is ''to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources'' (29 U.S.C. 651(b)). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards (29 U.S.C. 655(b) and 654(b)).

Under the Act, a safety or health standard is a standard that ''requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment'' (29 U.S.C. 652(8)). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) of the Act when it substantially reduces or eliminates a significant workplace risk, and is technologically and economically feasible, cost effective, consistent with prior Agency action or supported by a reasoned justification for departing from prior Agency action, and supported by substantial evidence; it also must effectuate the Act's purposes better than any national consensus standard it supersedes (*see International Union, UAW* v. *OSHA* (*LOTO II*), 37 F.3d 665 (D.C. Cir. 1994); and 58 FR 16612–16616 (March 30, 1993)). Rules promulgated by the Agency must be highly protective (*see* 58 FR 16612, 16614–15 (March 30, 1993); *LOTO II*, 37 F.3d 665, 669 (D.C. Cir. 1994)). Moreover, Section 8(g)(2) of the Act authorizes OSHA ''to prescribe such rules and regulations as [it] may deem necessary to carry out its responsibilities under the Act'' (*see* 29 U.S.C. 657(g)(2)).

Based on the available evidence, OSHA has preliminarily determined that the protocols described in the proposed rule meet the legal requirements to provide substantial protection to employees who use respirators when exposed to hazardous atmospheres (*see Industrial Union Dept.* v. *American Petroleum Institute*, 448 U.S. 607, 655 (1980); *International Union* v. *Pendergrass*, 878 F.2d 389, 392–93 (DC Cir. 1989); *Building and Construction Trades Dept., AFL-CIO* v. *Brock*, 838 F.2d 1258, 1264–65 (DC Cir. 1988)). OSHA also made a preliminary finding that the proposed rule is technologically feasible because the protective measures it requires already exist (*see American Textile Mfrs. Institute* v. *OSHA* (*Cotton Dust*), 452 U.S. 490, 513 (1981); *American Iron and Steel Institute* v. *OSHA* (*Lead II*), 939 F.2d 975, 980 (DC Cir. 1991)). Specifically, employers covered by this proposal already must comply with the fit-testing requirements specified in paragraph (f) of OSHA's Respiratory Protection Standard at 29 CFR 1910.134. Accordingly, these provisions currently are protecting their employees from the significant risk that results from poorly fitting respirators. In this regard, for OSHA to adopt the proposed protocols in the final rule, OSHA would have to determine that the proposed protocols provide employees with protection that is comparable to the protection afforded to them by the provisions of the standard PortaCount® QNFT protocol. If adopted, the protocols would not replace existing fit-testing protocols, but instead would be alternatives to them. Therefore, OSHA preliminarily finds that the proposal would not directly increase or decrease the protection afforded to employees, nor would it increase employers' compliance burdens. As demonstrated in the following section, the proposal may reduce employers' compliance burdens by decreasing the time required to fit test respirators for employee use. Accordingly, OSHA concludes that it is unnecessary to determine significant risk or the extent to which this proposal would reduce that risk, as typically would be required by *Industrial Union Department, AFL-CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980).

The Agency believes that the proposed rule is economically feasible because the employers can absorb or pass on the costs of compliance without threatening their long-term profitability or competitive structure (*see Cotton Dust*, 452 U.S. at 530 n. 55 (1981); *Lead II*, 939 F.2d 975, 980 (DC Cir. 1991)). Moreover, the preliminary economic analysis of the proposed rule describes the benefits and costs of the proposed rule (*see* section III.B. of this preamble, ''Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis''). Based on this information, OSHA made a preliminary determination that the proposed rule is an economically feasible means of meeting its statutory objective of reducing the risk associated with employee exposure to hazardous atmospheres while using respirators (*see*

Cotton Dust, 453 U.S. at 514 n. 32 (1981); *LOTO II*, 37 F.3d 665, 668 (DC Cir. 1994)).

B. Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis

The proposal is not economically significant within the context of Executive Order (''E.O.'') 12866 (58 FR 51735), or a ''major rule'' under Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''; 5 U.S.C. 804). The proposal would impose no additional costs on any private-or public-sector entity, and does not meet any of the criteria for a significant or major rule specified by E.O. 12866 or other relevant statutes.

The proposal offers employers additional options to fit test their employees for respirator use. In this regard, OSHA would supplement the standard PortaCount® QNFT protocol currently in Appendix A of the Respiratory Protection Standard with the proposed protocols if it approves them as a result of this proposed rulemaking. According to a recent survey of respirator use conducted by the National Institute for Occupational Safety and Health and the Bureau of Labor Statistics, approximately 7,500 establishments currently use an ambient-aerosol protocol out of nearly 282,000 establishments found by the survey to require respirator use (Ex. 6–3, Docket No. H049C (''Respiratory Protection—Assigned Protection Factors'').[4]

Under this proposal, employers would have a choice between the standard PortaCount® QNFT protocol consisting of exercises lasting one minute each, or the proposed protocols with exercises (six or eight) lasting 30 or 40 seconds each. By providing regulatory flexibility to these employers, the proposal may reduce their costs by decreasing fit-testing time. In this regard, OSHA assumes that the proposed protocols would be adopted by some employers who currently use the standard PortaCount® QNFT protocol for their employees. These employers would adopt the proposed protocols because these protocols would take less time to administer than the standard PortaCount® QNFT protocol, thereby decreasing the cost required for fit testing their employees. However, the Agency believes that the proposed protocols are unlikely to be adopted by employers who currently perform fit testing using other quantitative or qualitative fit tests because of the significant equipment and training investment they already have made to administer these fit tests.

Based on the above discussion, the Agency preliminarily concludes that this proposed rulemaking would impose no additional costs on employers, thereby eliminating the need for a preliminary economic analysis. Moreover, OSHA certifies that the proposal would not have a significant impact on a substantial number of small entities, and that the Agency does not have to prepare an initial regulatory flexibility analysis for this rulemaking under the SBREFA (5 U.S.C. 601 *et seq.*).

C. Paperwork Reduction Act

After thoroughly analyzing the proposed fit-testing provisions in terms of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.* and 5 CFR part 1320), OSHA believes that these provisions would not add to the existing collection of information (*i.e.*, paperwork) requirements regarding fit testing employees for respirator use. The paperwork requirement specified in paragraph (m)(2) of OSHA's Respiratory Protection Standard at 29 CFR 1910.134 specifies that employers must document and maintain the following information on quantitative fit tests administered to employees: the name or identification of the employee tested; the type of fit test performed; the specific make, model, style, and size of respirator tested; the date of the test; and the test results. The employer must maintain this record until the next fit test is administered. However, this paperwork requirement would remain the same whether employers currently use the other fit-testing protocols already listed in Part I of Appendix A of the Respiratory Protection Standard, or implement the proposed fit-testing protocols instead. Therefore, using one of the proposed fit-testing protocols in the context of the existing fit-testing protocols would not involve an additional paperwork-burden determination by OSHA because it already accounts for this burden under the paperwork analysis for the Respiratory Protection Standard (OMB Control Number 1218–0099).

Members of the public may send comments on this paperwork analysis to: Office of Information and Regulatory Affairs (*Attention:* Desk Officer for OSHA), Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503. The Agency also encourages commenters to submit a copy of their comments on this paperwork analysis to OSHA, along with their other comments on the proposed rule.

D. Federalism

The Agency reviewed the proposal according to the most recent Executive Order (''E.O.'') on Federalism (E.O. 13132; 64 FR 43225). This E.O. requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States before taking actions that restrict their policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. The E.O. allows Federal agencies to preempt State law only with the expressed consent of Congress. In such cases, Federal agencies must limit preemption of State law to the extent possible.

Section 18 of the Act; 29 U.S.C. 651 *et seq.*), expressly provides OSHA with authority to preempt State occupational safety and health standards to the extent that the Agency promulgates a Federal standard under Section 6 of the Act. Accordingly, Section 18 of the Act authorizes the Agency to preempt State promulgation and enforcement of requirements dealing with occupational safety and health issues covered by OSHA standards unless the State has an OSHA-approved occupational safety and health plan (namely, is a ''State-plan State''). (*See Gade* v. *National Solid Waste Management Association*, 112 S. Ct. 2374 (1992).)

With respect to States that do not have OSHA-approved plans, the Agency concludes that this proposed rule conforms to the preemption provisions of the Act. Additionally, Section 18 of the Act prohibits States without approved plans from issuing citations for violations of OSHA standards; the Agency finds that the proposed rulemaking does not expand this limitation. Therefore, for States that do not have approved occupational safety and health plans, this proposed rule would not affect the preemption provisions of Section 18 of the Act.

OSHA has authority under E.O. 13132 to propose the use of additional fit-testing protocols under its Respiratory Protection Standard at 29 CFR 1910.134 because the problems addressed by these fit-testing requirements are national in scope. The Agency preliminarily concludes that the fit-testing protocols proposed by this rulemaking would provide employers in every State with procedures that would assist them in protecting their employees from the risks of exposure to atmospheric hazards. In this regard, the proposal offers thousands of employers across the nation an opportunity to use additional protocols to assess respirator fit among their employees. Therefore,

[4] The standard PortaCount® QNFT protocol is the only ambient-aerosol protocol currently listed in Appendix A of the Respiratory Protection Standard.

the proposal would provide employers in every State with an alternative means of complying with the fit-testing requirements specified by paragraph (f) of OSHA's Respiratory Protection Standard.

Should the Agency adopt a proposed standard in a final rulemaking, Section 18(c)(2) of the Act (29 U.S.C. 667(c)(2)) requires State-plan States to adopt the same standard, or to develop and enforce an alternative standard that is at least as effective as the OSHA standard. However, the new fit-testing protocols proposed in this rulemaking would only provide employers with an alternative to the existing requirements for fit-testing protocols specified in the Respiratory Protection Standard; therefore, the alternative is not, itself, a mandatory standard. Accordingly, States with OSHA-approved State Plans would not be obligated to adopt the final provisions that may result from this proposed rulemaking. Nevertheless, OSHA strongly encourages them to adopt the final provisions to provide additional compliance options to employers in their States.

In summary, this proposed rule complies with E.O. 13132. In States without OSHA-approved State Plans, Congress expressly provides for OSHA standards to preempt State job safety and health rules in areas addressed by the Federal standards; in these States, this proposed rule would limit State policy options in the same manner as every standard promulgated by the Agency. In States with OSHA-approved State Plans, this rulemaking does not significantly limit State policy options.

E. State-Plan States

Section 18(c)(2) of the Act (29 U.S.C. 667(c)(2)) requires State-Plan States to adopt mandatory standards promulgated by OSHA. However, as noted in the previous section of this preamble, States with OSHA-approved State Plans would not be obligated to adopt the final provisions that may result from this proposed rulemaking. Nevertheless, OSHA strongly encourages them to adopt the final provisions to provide compliance options to employers in their States. In this regard, OSHA preliminarily concludes that the fit-testing protocols proposed by this rulemaking would provide employers in the State-Plan States with procedures that would protect the safety and health of employees who use respirators against hazardous airborne substances in their workplace at least as well as the standard PortaCount® QNFT protocol. The 24 States and two Territories with State Plans are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

F. Unfunded Mandates Reform Act

OSHA reviewed the proposal according to the Unfunded Mandates Reform Act of 1995 (''UMRA''; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (58 FR 58093). As discussed above in section III.B of this preamble (''Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis''), the Agency made a preliminary determination that the proposal imposes no additional costs on any private-or public-sector entity. The substantive content of the proposal applies only to employers whose employees use respirators for protection against airborne workplace contaminants, and compliance with the proposal would be strictly optional for these employers. Accordingly, the proposal would require no additional expenditures by either public-or private-sector employers; therefore, this proposal is not a significant regulatory action within the meaning of Section 202 of the UMRA (2 U.S.C. 1532).

Under voluntary agreement with OSHA, some States enforce compliance with their State standards on public-sector entities, and these agreements specify that these State standards must be equivalent to OSHA standards. Thus, although OSHA preliminarily concludes that the proposed protocols would impose no additional costs on public-sector employers, the proposal would not involve any unfunded mandates imposed on any other State or local government entity. Consequently, this proposal does not meet the definition of a ''Federal intergovernmental mandate'' (*see* Section 421(5) of the UMRA (2 U.S.C. 658(5))). Therefore, for the purposes of the UMRA, the Agency preliminarily certifies that this proposal does not mandate that State, local, or tribal governments adopt new, unfunded regulatory obligations, nor does the proposed rule increase expenditures by the private sector of more than $100 million a year.

G. Applicability of Existing Consensus Standards

Section 6(b)(8) of the Act (29 U.S.C. 655(b(8)) requires OSHA to explain ''why a rule promulgated by the Secretary differs substantially from an existing national consensus standard,'' by publishing ''a statement of the reasons why the rule as adopted will better effectuate the purposes of the Act than the national consensus standard.'' In this regard, when OSHA promulgated its original respirator fit-testing protocols under Appendix A of its final Respiratory Protection Standard (29 CFR 1910.134), no national consensus standards addressed these protocols. Later, the American National Standards Institute (ANSI) developed a national consensus standard on fit-testing protocols (''Respirator Fit Testing Methods,'' ANSI Z88.10–2001) as an adjunct to its national consensus standard on respiratory-protection programs.

Paragraph 7.2 of ANSI Z88.10–2001 specifies the requirements for conducting a PortaCount® quantitative fit test, which differ substantially from the standard PortaCount® QNFT protocol provided in Part I.C.3 of OSHA's Respiratory Protection Standard. These protocols differ in terms of the fit-testing exercises required, and the duration of these exercises. In addition, the ANSI standard provides no data or information on the accuracy and reliability of its protocol. The Agency believes that limiting fit-testing options to the protocol currently specified by the ANSI standard would seriously impede the development of fit-testing protocols that are more accurate and reliable, and less costly to administer, than the ANSI protocol.

H. Advisory Committee for Construction Safety and Health Review of the Proposed Standard

The proposal to add two quantitative fit-testing protocols to Part I.C of Appendix A of OSHA's Respiratory Protection Standard would affect the construction industry because it revises the fit-testing requirements specified by the standard, which is applicable to the construction industry.[5] Whenever the Agency proposes a rule involving construction activities, the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3704), OSHA regulations governing the Advisory Committee for Construction Safety and Health (ACCSH) (i.e., 29 CFR 1912.3), and provisions governing OSHA rulemaking (i.e., 29 CFR 1911.10) require OSHA to consult with the ACCSH. Specifically, 29 CFR 1911.10 requires that the Assistant Secretary provide the ACCSH with ''any proposal

[5] The Respiratory Protection Standard for the construction industry at 29 CFR 1926.103 cross-references the Respiratory Protection Standard for general industry at 29 CFR 1910.134.

of his own,'' together with ''all pertinent factual information available to him, including the results of research, demonstrations, and experiments.'' Accordingly, OSHA provided the ACCSH members with copies of the proposal and other relevant information several weeks before the January 24, 2008, ACCSH meeting. OSHA staff met with the ACCSH at that meeting to discuss the proposal, and to answer members' questions about it. At the end of this session, the ACCSH voted to defer making any recommendations to OSHA regarding the proposal until their next meeting so they could thoroughly review the proposal and the other relevant information, including the peer-reviewed article described above under section II.B of this notice (''Summary of the Peer-Reviewed Article'').

At the May 16, 2008, ACCSH meeting, OSHA staff again met with the ACCSH to discuss the proposal. Following this discussion, the ACCSH recommended unanimously that OSHA: (1) Remove the PortaCount® QNFT protocol 1 from the proposal because it failed to meet the ANSI Z88.10–2001 criteria for test sensitivity and predicted value of a pass; and (2) include the PortaCount® QNFT protocol 2 in the proposal because it met all of the ANSI Z88.10–2001 criteria.

I. Public Participation

OSHA encourages members of the public to participate in this rulemaking by submitting comments on the proposal, as well as documentary evidence in support of these comments. Accordingly, the Agency invites interested parties having knowledge of, or experience with, respirator fit-testing protocols to participate in this process, and welcomes any pertinent information that will provide it with the best available evidence on which to develop the final regulatory provisions. The Agency invites interested parties to submit written views, arguments, and data concerning this proposed rule, including: responses to the issues specified under section II.B of this preamble (''Issues for Public Comment''), and comments on OSHA's determination of the economic or other regulatory impacts of the proposed rule on the regulated community. Comments may be submitted in response to this **Federal Register** notice: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking portal; (2) by facsimile (fax); or (3) by hard copy. When submitting comments, follow the procedures specified above in the sections of this preamble titled **DATES** and **ADDRESSES**. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this rulemaking (Docket No. OSHA–2007–0007). In addition, comments must clearly identify the provision of the proposal being addressed, the position taken with respect to an issue, and the basis for that position. Comments, along with supporting data and references, received by the end of the specified comment period will become part of the proceedings record. This material, including comments, is available for public inspection without change at *http://www.regulations.gov*[6] and at OSHA's docket Web site at http://www.dockets.osha.gov (under Docket No. OSHA–2007–0007). Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and birth dates with their comments. Exhibits referenced in this **Federal Register** notice also will be available at *http://www.regulations.gov* and *http://www.dockets.osha.gov* under the same docket number.

Material that supplements electronic comments may be uploaded electronically (including by fax). Supplemental material also may be mailed to the OSHA Docket Office (*see* the section of this preamble titled **ADDRESSES**) provided it identifies the electronic comments using the commenter's name, comment submission date, and docket number so OSHA can attach the materials to the appropriate comments. Reading or downloading some of this material (*e.g.,* copyrighted material) from the *http://www.regulations.gov* and *http://www.dockets.osha.gov* Web sites is not possible; however, this material is available for inspection and copying (along with comments and exhibits) at the OSHA Docket Office (*see* the section of this preamble titled **ADDRESSES**).

Security-related procedures may delay significantly the delivery of comments and other material submitted through the regular mail. For information about security procedures involving the regular mail, as well as express delivery and messenger or courier service, contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, also are available at OSHA's Web site at *http://www.osha.gov.*

[6] Information on using this Web site to submit comments and to access dockets is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information and assistance about using the Internet to locate docket submissions.

List of Subjects in 29 CFR Part 1910

Fit testing, Hazardous substances, Health, Occupational safety and health, Respirators, Toxic substances.

Authority and Signature

Thomas M. Stohler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency issues the proposed amendment under the following authorities: Sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); Section 41 of the Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 5–2007 (72 FR 31159); and 29 CFR part 1911.

Signed at Washington, DC, on January 13, 2009.

Thomas M. Stohler,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

IV. Proposed Amendment to the Standard

For the reasons stated above in the preamble, the Agency proposes to amend 29 CFR part 1910 as follows:

PART 1910—[AMENDED]

Subpart I—[Amended]

1. Revise the authority citation for subpart I of part 1910 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); Section 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); and Secretary of Labor's Order Nos. 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31159), as applicable. Sections 29 CFR 1910.132, 1910.134, and 1910.138 also issued under 29 CFR part 1911. Sections 29 CFR 1910.133, 1910.135, and 1910.136 also issued under 29 CFR part 1911 and 5 U.S.C. 553.

2. Add paragraphs (c) and (d) to section C.3 of Appendix A to § 1910.134 to read as follows:

§ 1910.134 Respiratory protection.

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Appendix A to § 1910.134: Fit Testing Procedures (Mandatory)

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C. * * *

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3. * * *

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(c) Revised PortaCount® Quantitative Fit-Testing Protocol 1.

(1) When administrating this protocol to test subjects (*i.e.*, employees), employers must comply with the requirements specified in paragraphs (a) and (b) of Part 1.C.3 of this appendix. In addition, employers must use the eight fit-testing exercises specified in section I.A.14 of this appendix when administering this protocol. Test subjects must perform these fit-testing exercises for at least 30 seconds, except for the grimace exercise, which test subjects must perform for 15 seconds.

(2) Calculate the overall fit factor for this protocol as follows:

$$\text{Overall Fit Factor} = \frac{7}{1/ff_1 + 1/ff_2 + 1/ff_3 + 1/ff_4 + 1/ff_5 + 1/ff_7 + 1/ff_8}$$

Note to Paragraph (c)(2): Only seven of the eight fit-testing exercises are used in this calculation because the results for the grimace exercise (ff_6) are not included in the calculation.

(d) Revised PortaCount® Quantitative Fit-Testing Protocol 2.

(1) When administrating this protocol to test subjects (*i.e.*, employees), employers must comply with the requirements specified in paragraphs (a) and (b) of Part 1.C.3 of this appendix. In addition, employers must use the fit-testing exercises specified in section I.A.14 of this appendix when administering this protocol, except that test subjects must not perform the fit-testing exercises specified by paragraphs (a)(1) and (a)(2) of section I.A.14 (*i.e.*, the initial normal-breathing exercise and the deep-breathing exercise, respectively). Test subjects must perform these fit-testing exercises for at least 40 seconds, except for the grimace exercise, which test subjects must perform for 15 seconds.

(2) This protocol requires the following minimum pass-fail fit-testing criteria: for half masks, an overall fit factor of 200 (instead of the usual 100); and, for full-facepiece respirators, an overall fit factor of 1,000 (instead of the usual 500).

(3) Calculate the overall fit factor for this protocol as follows:

$$\text{Overall Fit Factor} = \frac{5}{1/ff_3 + 1/ff_4 + 1/ff_5 + 1/ff_7 + 1/ff_8}$$

Note to Paragraph (d)(3): Only five of the eight fit-testing exercises are used in this calculation because test subjects do not perform the initial normal-breathing exercise (ff_1) and the deep-breathing exercise (ff_2), and the results for the grimace exercise (ff_6) are not included in the calculation.

* * * * *

[FR Doc. E9–922 Filed 1–16–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 160, 161, 164, and 165

[USCG–2005–21869]

RIN 1625–AA99

Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Coast Guard announces a public meeting to receive comments on a notice of proposed rulemaking to amend Coast Guard regulations governing Notice of Arrival and Departure (NOAD) and Automatic Identification System (AIS) requirements.

DATES: A public meeting will be held on March 5, 2009, from 12:30 p.m. to 3 p.m. to provide an opportunity for oral comments. Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting. The comment period for the proposed rule closes April 15, 2009. All comments and related material submitted after the meeting must either be submitted to our online docket via *http://www.regulations.gov* on or before April 15, 2009, or reach the Docket Management Facility by that date.

ADDRESSES: The public meeting will be held at the United States Coast Guard Headquarters Building, Room 2415, 2100 2nd Street, SW., Washington, DC 20593; a government-issued photo identification (for example, a driver's license) will be required for entrance to the building.

You may submit written comments identified by docket number USCG–2005–21869 before or after the meeting using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE, Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. Our online docket for this rulemaking is available on the Internet at *http://www.regulations.gov* under docket number USCG–2005–21869.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the NOAD portion of this proposed rulemaking or concerning the public meeting, please contact Lieutenant Sharmine Jones, Office of Vessel Activities (CG–543), Coast Guard, *Sharmine.N.Jones@uscg.mil,* telephone 202–372–1234. If you have questions on the AIS portion of this proposed rulemaking, contact Mr. Jorge Arroyo, Office of Navigation Systems (CG–5413), Coast Guard, *Jorge.Arroyo@uscg.mil,* telephone 202–372–1563. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

We published a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 16, 2008 (73 FR 76295), entitled ''Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System.'' In it we stated our intention to hold a public meeting, and to publish a notice