closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. This provides that such a carrier is small entity if it employs no more than 1,500 employees. None of the four BOCs that would be affected by amendment of these rules meets this standard. The Commission next turns to whether any of the section 272 affiliates may be deemed a small entity. Under SBA regulation 121.103(a)(4), ''SBA counts the * * * employees of the concern whose size is at issue and those of all its domestic and foreign affiliates * * * in determining the concern's size.'' In that regard, although section 272 affiliates operate independently from their affiliated BOCs, many are 50 percent or more owned by their respective BOCs, and thus would not qualify as small entities under the applicable SBA regulation. Moreover, even if the section 272 affiliates were not ''affiliates'' of BOCs, as defined by SBA, as many are, the Commission estimates that fewer than fifteen section 272 affiliates would fall below the size threshold of 1,500 employees. Particularly in light of the fact that Commission data indicate that a total of 261 companies have reported that their primary telecommunications service activity is the provision of interexchange services, the fifteen section 272 affiliates that may be small entities do not constitute a ''substantial number.'' Because the proposed rule amendments directly affect only BOCs and section 272 affiliates, based on the foregoing, the Commission concludes that a substantial number of small entities will not be affected by our proposal.

10. Accordingly, for the reasons set forth above, the Commission certifies that the proposals in this NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Notice, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

Ordering Clauses

11. Accordingly, pursuant to the authority contained in sections 2, 4(i)–(j), 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)–(j), 272, 303(r), this *Notice of Proposed Rulemaking* is Adopted.

12. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall Send a copy of this *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–29054 Filed 11–20–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–03–15073]

RIN 2127–AI67

Federal Motor Vehicle Safety Standards; Motorcycle Controls and Displays

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In this document, we (NHTSA) propose two regulatory alternatives to amend the motorcycle controls and displays standard. Each alternative would require that for certain motorcycles without a clutch control lever, the rear brakes be controlled by a lever located on the left handlebar. We also request comment on industry practices and plans regarding controls for motorcycles with integrated brakes. Finally, we propose minor changes to a table in the motorcycle controls and displays standard. This rulemaking responds to a petition from Vectrix Corporation.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 20, 2004.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at (202) 366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Michael Pyne, Office of Crash Avoidance Standards at (202) 366–4171. His FAX number is (202) 493–2739. For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel, at (202) 366–2992. Her FAX number is (202) 366–3820. You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

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I. What Does FMVSS No. 123 State at Present?

Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle controls and displays,* specifies requirements for the location, operation, identification, and illumination of motorcycle controls and displays. The

purpose of FMVSS No. 123 is to minimize accidents caused by operator error in responding to the motoring environment, by standardizing certain motorcycle controls and displays.

Among other requirements, FMVSS No. 123 (at S5.2.1, Table 1) requires the control for a motorcycle's rear brakes to be located on the right side of the motorcycle and be operable by the rider's right foot. Section S5.2.1 at Table 1 also requires the control for a motorcycle's front brakes to be located on the right handlebar.

Although the rear brake control is generally operated by the rider's right foot, FMVSS No. 123 permits a ''motor-driven cycle'' [1] to have its rear brake controlled by a lever on the left handlebar. FMVSS No. 123 also states that, if a motorcycle has an ''automatic clutch'' (*i.e.,* a transmission which eliminates the need for a clutch lever) and a supplemental rear brake control (in addition to the right foot control), the supplemental control must be located on the left handlebar. If a motorcycle is equipped with a single control for both the front and rear brakes, that control must be located and operable in the same manner as a rear brake control.

II. How Did This Rulemaking Begin?—Vectrix Petition

In a letter dated November 4, 1998, the Vectrix Corporation of New Bedford, Massachusetts, manufacturers of electric scooters, petitioned for rulemaking to change the rear brake control requirement in FMVSS No. 123 to permit the ''rear brake to be actuated by the left hand for vehicles with an automatic or fixed ratio [single speed] transmission.''

The regulatory change proposed in Vectrix's petition would result in any motorcycle (not just a motor-driven cycle) having its rear brake control on the left handlebar, as long as a clutch lever (which otherwise would have to be placed on the left handlebar) was not present. Vectrix stated the following about motorcycles without clutch levers:

> [T]he left hand of the rider is free to operate a brake lever, making the foot pedal mechanism unnecessary. Left hand braking is also more desirable from the standpoint of international harmonization, since motorcycles and scooters with automatic or fixed ratio transmissions sold in Europe and Asia have rear brake controls mounted on the left handlebar. The rear brake pedal required for sale in the United States would not meet with much acceptance in European and Asian markets, and manufacturers seeking to sell products both domestically and abroad face the unnecessary complication of producing two separate models.

In a letter dated August 29, 2002, NHTSA granted Vectrix's petition for rulemaking.

III. Why NHTSA Granted This Petition—Petitions for Temporary Exemption

NHTSA decided to grant Vectrix's petition for rulemaking in light of a number of recent petitions we have received requesting temporary exemption from the rear brake location requirement of FMVSS No. 123. Since 1999, we have granted several petitions for temporary exemption from the brake control location requirements.[2] These petitions have come from manufacturers of scooters with automatic transmissions and handlebar-mounted brake controls, which is a common arrangement for scooters sold in Europe, Asia, and other parts of the world outside of the United States. These manufacturers wished to sell their scooters in the United States but were prevented from doing so by the requirement that motorcycles be equipped with a right foot control for the rear brake. Their scooters would be able to meet all other Federal motor vehicle safety standards applicable to motorcycles.

A. Aprilia's Petition for Temporary Exemption

Aprilia S.p.A. of Noale, Italy, was the first manufacturer to petition for a temporary exemption from S5.2.1 (Table 1) of FMVSS No. 123. For the rear brakes, Aprilia's Leonardo 150 motorcycle had a left handlebar control, not the right foot control specified in FMVSS No. 123. Aprilia petitioned to be permitted to use the left handlebar as the location for the rear brake control for the Leonardo 150. The Leonardo's 150 cc engine produces more than the five horsepower maximum permitted for motor-driven cycles, so that it could not have its rear brake controlled by a lever on the left handlebar. According to Aprilia, the frame of the Leonardo ''has not been designed to mount a right foot operated brake pedal, which is a sensitive pressure point able to apply considerable stress to the frame, causing failure due to fatigue * * *'' Aprilia, as a motor vehicle manufacturer new to the U.S. market, stated that it ''intends to begin sales into the United States for market testing purposes during the 1999 sales year and would like to present a model line including the Leonardo 150 motorcycle.'' Without NHTSA's grant of a temporary exemption from S5.2.1, of FMVSS No. 123, Aprilia would not have been able to sell the vehicle in the United States. Aprilia requested an exemption for calendar years 1999 and 2000.

B. Motorcycle Crash Causation Studies

When NHTSA received Aprilia's petition, there was little current information available on motorcycle crashes with adequate detail to identify important issues such as to what extent riders' unfamiliarity with motorcycle controls results in crashes. Earlier studies in the area of motorcycle crash causation indicated that ineffective use of brakes is a problem area for crash-involved motorcyclists. NHTSA's 1981 Report on Motorcycle Accident Causation (DOT–HS–805–862), which is still the most comprehensive study of motorcycle crashes, cites lack of rider experience with the motorcycle as an important cause of crashes. Lack of rider experience may include unfamiliarity with the controls. The report's in-depth review of 900 cases showed that riders lacked emergency braking skills, used front and rear brakes together in only 17 percent of the crashes and used the rear brake alone in 18.5 percent of the crashes. After reviewing crash information and conducting interviews, the report concluded that riders failed to use basic motorcycle riding skills during emergencies. The report suggested that the most obvious non-regulatory solution to riders' poor brake application skills was for riders to gain more experience and training for emergencies.

In a 1998 paper titled ''Motorcycle Braking Controls—An Ergonomic Dilemma,'' [3] Rudolph G. Mortimer of the University of Illinois, Urbana-Champaign, pointed out that in the instant of an emergency, riders often do not use the front brake effectively. Mortimer concluded that motorcyclists often favored the rear, foot-operated

[1] ''a motorcycle with a motor that produces five brake horsepower or less'' (49 CFR section 571.3)

[2] (1) Aprilia: Leonardo 150 sport (64 FR 44264, 8/13/99); Scarabeo 150 touring, reissued (65 FR 1225, 01/07/00); Habana 150 cruiser (66 FR 59519, 11/28/01).

(2) Vectrix: Electric scooter (64 FR 45585, 8/20/99).

(3) Italjet S.p.A.: Torpedo 125, Formula 125, Millenium 125, and Millenium 150 (64 FR 58127, 10/28/99).

(4) Piaggio: Vespa ET4 125 and 150 (65 FR 64741, 10/30/00).

(5) Honda: NSS250 (65 FR 69130, 11/15/00); FJS600 (66 FR 59519, 11/28/01).

(6) Rex Products, Inc. dba Bajaj USA: Saffire 90cc (66 FR 39222, 7/27/01).

Grant of these petitions has allowed the manufacturers to sell up to 2500 of each noncomplying scooter in the United States during the two-year period of exemption.

[3] Proceedings of the Silicon Valley Ergonomics Conference and Exposition, ErgoCon '98.

brake in normal driving and that it was therefore not surprising that they mostly used the rear brake when a crash was imminent.

These research reports provided valuable information in an area where reliable data are scarce. However, it is not clear from the reports or any other available literature whether the reliance of riders on the rear brake in emergencies has anything to do with the placement of the rear brake control. More specifically, the reports did not add to our understanding whether lack of standardization of the controls caused rider error in emergencies, or if overall unfamiliarity with the motorcycle was the more important factor in crashes.

The agency is addressing other motorcycle safety issues by issuing a *Motorcycle Safety Program* (January 2003), which calls for new program actions to supplement existing initiatives to reduce the number of motorcycle fatalities and injuries. Motorcyclist fatalities have increased from 2,116 in 1997 to 3,181 in 2001, an increase of over 50 percent. *The Motorcycle Safety Program* may be viewed at *http://www.nhtsa.dot.gov/people/injury/pedbimot/motorcycle.*

C. Brake Control Location Study Funded by Aprilia

Because the available studies did not show a connection between rear brake control location and crashes, before we granted Aprilia's petition for temporary exemption for the Leonardo 150, we asked Aprilia to comment on our concern that a left hand rear brake control on a vehicle that is more powerful than a motor-driven cycle may confuse riders, resulting in crashes. As earlier stated, the purpose of FMVSS No. 123 is to ''minimize accidents caused by operator error in responding to the motoring environment, by standardizing certain motorcycle controls and displays.'' Our concern was that differing rear brake control locations may contribute to unfamiliarity with a motorcycle's controls and thus degrade a rider's overall braking reaction beyond what would exist on a motorcycle with a conventionally configured (right foot operable) control.

Aprilia responded by hiring Carter Engineering of Franklin, Tennessee, to conduct a study comparing braking reaction times of riders on an Aprilia scooter without a foot brake and a conventional scooter with a foot brake. The report on that effort, ''Motor Scooter Braking Control Study'' (Report No. CE–99–APR–05, May 1999), may be reviewed at the Department of Transportation's Docket at *http://dms.dot.gov,* Docket No. NHTSA–98–4357.

In the Carter Engineering study, test subjects (adults test-riding the scooters) compared rear braking on a Leonardo 150 with a Yamaha XC–125 Riva with a conventional foot-operated rear brake. The two test scooters were arranged side-by-side facing a traffic signal light positioned several yards away at approximately eye level. Test subjects with varying degrees of motorcycle riding experience were selected randomly from among dealership employees and customers. Each subject simulated ''riding'' both models, which were stationary on their center stands during the testing. The test subjects responded to the traffic signal by activating the brakes whenever a red light was observed. The subjects' braking reaction times were measured electronically.

The study concluded that the subjects' braking response times on the Leonardo were shorter on average than those measured on the Yamaha scooter with conventional right-foot mounted brake controls. Aprilia commented that ''[o]verall, the test subjects' reaction times on the Leonardo were approximately 20 percent quicker than their reaction times on the conventional motorcycle.'' Aprilia stated its belief that ''a less complex braking arrangement like that of the Leonardo will improve rider reaction in an emergency situation.''

We note that the test subjects, selected at a franchised dealer of Honda, Yamaha, Suzuki and Kawasaki motorcycles, were either employees or customers of the dealership. As such, all test subjects presumably have experience in riding motorcycles or scooters, and are probably not novice riders. We have no indication of how much the test subjects knew about the study, or whether they were informed of what would be the desired braking results, from Aprilia's and Carter Engineering's viewpoint.

Nevertheless, Aprilia did provide some evidence, in the form of the Carter Engineering report, showing that American riders do not appear to hesitate in using a left handlebar-mounted rear brake control and that riders may actually gain some benefit in their braking response time. Based in part on the Carter Engineering study, we granted the Aprilia petition, interpreting the Carter Engineering report as an indication that the Leonardo 150 rider's braking response was not likely to be degraded by the different placement of the brake controls, thus addressing our main safety concern and meeting the statutory requirement for grant of an exemption.

D. Search of NHTSA's Consumer Complaint Database

As an additional measure to determine whether there is a safety-related problem with placement of the motorcycle rear brake control, we conducted a search of the NHTSA database of consumer complaints, recalls, and service bulletins to look for problems arising from motorcycle brake controls. We found only one complaint since 1995 directly relating to brake controls. In that complaint, the owner of a model year 1997 touring motorcycle complained that the right foot brake was in a ''somewhat awkward position,'' requiring the rider to rotate his ankle too far downward to achieve effective brake activation. Although FMVSS No. 123 specifies for the rear brake control, downward motion for the operator's right foot, the range of motion to actuate motorcycle foot brakes is not an aspect of performance regulated in FMVSS No. 123.

IV. The Regulatory Alternatives for Rear Brake Control Location

With the motorcycle crash causation studies and Carter Engineering tests as background, we propose two regulatory alternatives for the rear brake control location. After considering the comments on this proposal, we will adopt one of the alternatives in the final rule. The first alternative would require the rear brake control to be located on the left handlebar for any motorcycle that lacks a clutch, regardless of the motorcycle's configuration. The second alternative would require the left handlebar location only for clutchless motorcycles that are ''scooters,'' a newly defined subset of motorcycles. Under either alternative, all other motorcycles would meet present FMVSS No. 123 rear brake location requirements that the rear brake is operated by a right foot control.

A. First Alternative

We propose the following as the first alternative: FMVSS No. 123 would specify two brake control configurations. The factor determining which of the two configurations the motorcycle manufacturer must use would be determined by whether the motorcycle is equipped with a clutch lever. Motorcycles with a clutch lever would be required to have the rear brake control on the right side operated by the rider's right foot. Motorcycles without a clutch lever would be required to have the rear brake control on the left handlebar and would have the option of

a supplemental control on the right side operated by the rider's right foot. For the front brake control, FMVSS No. 123 would continue to require a lever on the right handlebar in all cases.

If FMVSS No. 123 is amended in accordance with the first regulatory alternative, the present optional configuration allowed on motor-driven cycles (presently specified in FMVSS No. 123's Table 1, Column 2, Item 11) would become mandatory on any motorcycle without a clutch lever. Motorcycles without a clutch control include those with automatic transmissions, single speed motorcycles, and possibly in the future, motorcycles with manual transmissions but automatic clutches.

Regarding motorcycles with automatic transmissions, FMVSS No. 123 at S5.2.1 presently states: ''If a motorcycle with an automatic clutch is equipped with a supplemental rear brake control, the control shall be located on the left handlebar.'' Under the first alternative proposal, this requirement would be modified because, on motorcycles with automatic transmissions, manufacturers may wish to provide a right foot control in addition to the left handlebar control for the rear brake. In effect, the brake control configuration for automatic transmission motorcycles would remain exactly the same as FMVSS No. 123 presently specifies, but the right foot control, rather than the left handlebar control, would be considered the supplemental control.

B. Second Alternative

For the second alternative, we propose a regulatory approach for the U.S. similar to what is already specified in European countries and in Japan. We propose that FMVSS No. 123 require that scooters without manual clutch levers have their rear brake control located on the left handlebar. This alternative would define ''scooter'' as a subset of motorcycles. We propose to use the ''platform'' on a motorcycle as the characteristic distinguishing ''scooters'' from ''motorcycles.'' As further explained below, the ECE regulation allows the left handlebar location that we propose to require under this alternative. Specifying the left handlebar location for the rear brake control would maintain the highest degree of international harmonization.

1. How a ''Scooter'' Differs From Other ''Motorcycles''

Scooters can be distinguished from other motorcycles by a number of design characteristics. First, they have a step-through frame architecture that leaves the space directly in front of the rider's seat largely open to allow the rider to mount the seat without having to swing a leg over it. In contrast, other motorcycles almost always have their gas tanks and engines located in the space forward of the seat and have rigid frame members located there.

Second, scooters are characterized by having a platform or floorboard for the rider's feet built into the body structure. The platforms are in contrast with the foot pegs used on other motorcycles. Some other motorcycles may be equipped with individual platforms or floorboards for each of the rider's feet, but the individual platforms usually are not part of the body structure of the motorcycle as are the platforms on a scooter.

It is also noted that although they are usually smaller than full-size motorcycles, scooters often have engines generating more than five horsepower. Because they may exceed five horsepower, scooters may not qualify as ''motor-driven cycles'' as defined in 49 CFR part 571.3.

2. Advancing International Harmonization

Most of the scooter models which have been granted exemptions from FMVSS No. 123's rear brake control placement requirements are identical to scooter models sold in Europe and Japan. Currently, there is no regulatory or statutory definition in the Federal motor vehicle safety standards distinguishing scooters from other motorcycles. However, a relevant international regulation distinguishing scooters from other motorcycles is United Nations ECE Regulation No. 60, Addendum 59, which is the basis for national regulations concerning motorcycle controls in many European countries and Japan. ECE Regulation No. 60, Addendum 59 includes a definition of the term ''platform'' which means ''that part of the vehicle on which the driver places his feet, when seated in the normal driving position, in the case that the vehicle is not equipped with riding pedals or footrests for the driver.'' The ''riding pedals'' refers to the pedals on mopeds, like those on bicycles, for propulsion. ''Footrests'' are defined in the ECE standard as ''the projections on either side of the vehicle on which the driver places his feet when seated in the driving position,'' and they usually are in the form of foot pegs.

ECE Regulation No. 60, Addendum 59 allows a platform-equipped motorcycle, *i.e.*, a scooter, to have its rear brake controlled by a lever on the left handlebar if the scooter has an automatic transmission. If the scooter has a manual transmission, it must have a foot control on the right side for the rear brake.

We note that ECE Regulation No. 60, Addendum 59 limits the use of a left handlebar lever for the rear brake to motorcycles which, in addition to having a platform, ''have a maximum design speed not exceeding 100 km/h.'' One hundred kilometers per hour (or 62 miles per hour), once was a speed beyond the capability of most scooters, but today many scooters can exceed it. According to information provided by Honda Motor Co. and Aprilia, manufacturers in Europe and Japan are not required by the regulations of the individual nations in which they market their scooters to adhere to the 100 km/h maximum design speed portion of the requirement for placement of the rear brake control. The end result has been that scooters almost universally have their rear brake controls located on the left handlebars (since they also have automatic transmissions), even if they can attain speeds in excess of 100 km/h.

The approach taken in the second alternative describes motorcycles for which temporary exemptions for rear brake control placement were sought because the motorcycles were constructed to meet ECE Regulation No. 60, Addendum 59 (except for the 100 km/h maximum speed requirement). The approach taken in the second regulatory alternative would also achieve a measure of international harmonization with existing global regulations that has previously been lacking.

3. Supplemental Rear Brake Controls

Regarding supplemental rear brake controls, under the second alternative the present regulatory statement in S5.2.1 (''If a motorcycle with an automatic clutch is equipped with a supplemental rear brake control, the control shall be located on the left handlebar.'') is still applicable because most motorcycles would continue to have a right foot pedal to control their rear brakes, and a supplemental rear brake control would be located on the left handlebar if no clutch lever was present, as FMVSS No. 123 requires at present. However, under this alternative, it would be necessary to specify that, if a platform-type motorcycle (scooter) with an automatic transmission has a supplemental rear brake control, it must be a right foot pedal. We have proposed this change in S5.2.1 of the draft regulatory language of the second alternative.

C. Motorcycles With Integrated Braking

1. The Honda Petition for Temporary Exemption

Among the requests for temporary exemption from FMVSS No. 123's right foot rear brake control requirements was one from American Honda Motor Company, Inc. for its NSS250 scooter, also called the ''Reflex.'' The NSS250 scooter is equipped with an integrated braking system which replaces the dedicated rear brake control with a control connected to the rear brake caliper but also to one piston of the multi-piston front caliper, thus providing partial front brake application along with rear brake application. In accordance with FMVSS No. 123, a separate front brake control on the right handlebar activates the remaining front caliper pistons.

At present, FMVSS No. 123 at S5.2.1 specifies that, if provided, an integrated brake control must be located and operable in the same manner as a rear brake control. This provision addresses motorcycles which have only a single control for all braking functions, *i.e.*, those without separate front and rear brake controls. It also addresses systems with two separate controls in which one of the two is a control that applies braking force to both brakes, as in the case of the NSS250.

Under both proposed regulatory alternatives, on any motorcycle with a manual clutch, the control for an integrated brake system would have to be on the right foot pedal since that would be the required location of the rear brake control. For clutchless motorcycles, the first alternative would require that a control for an integrated brake system be located on the left handlebar. Under the second alternative, for clutchless scooters, there must be a control for an integrated brake system on the left handlebar. For all other clutchless motorcycles, the second alternative would require the integrated brake system control to be on the right foot pedal.

On the Honda NSS250, for example, the integrated brake system control is considered the rear brake control since it acts primarily on the rear brake caliper and is the only rear brake control provided. The NSS250 and other motorcycles with integrated braking systems would be able to comply with either regulatory alternative.

2. Supplemental Controls on Integrated Braking Systems

Since a motorcycle could be equipped with integrated braking as well as a supplemental brake control, it is necessary to specify that the supplemental control provide the same integrated braking effect that is provided by the primary rear brake control. To allow a supplemental rear brake control that produced a different braking effect than the primary rear brake control may lead to rider confusion or hesitation.

To ensure that a supplemental brake control provides the same braking function as a primary rear brake control in cases where the primary control is an integrated control, we propose to add the following statement to S5.2.1: ''The supplemental brake control shall provide brake actuation identical to that provided by the required control of Table 1, Item 11, of this Standard.''

Because an integrated control may be located either on the left handlebar or on the right foot pedal depending on whether a motorcycle is clutchless (first alternative) or is a clutchless scooter (second alternative), we believe that it is important to make the regulatory text definitive on this issue. In order to clarify that an integrated brake control must be located as if it were a rear brake control, we have modified the last statement in S5.2.1 under both regulatory alternatives as follows: ''If a motorcycle is equipped with self-proportioning or antilock braking devices utilizing a single control for front and rear brakes, the control shall be located and operable in the same manner as a rear brake control, *as specified in Table 1, Item 11, and in this paragraph*.'' (Italicized language is new language that would be added to the texts of both regulatory alternatives.)

3. Request for Comments on New Developments in Motorcycle Integrated Braking Systems

Since the new type of braking system on the NSS250 has generated a high level of interest from members of the public, the agency seeks information about alternative configurations for motorcycle brake controls and other anticipated developments that might influence future brake system safety requirements. In particular, we are interested in finding out if integrated braking systems such as the current Honda system in which independent control of the front brake but not the rear brake remains possible, are likely to proliferate. We are also interested in knowing if motorcycle manufacturers are considering arrangements such as fully integrated brakes for which there would be one control for all brakes, where as in passenger automobiles and trucks, there are no separate controls for front and rear brakes. To gauge public response to some of these issues, we request responses to the following questions:

(1) Should the agency anticipate an increase in the use of or the demand for integrated brake systems similar to those that are currently in production, or for systems that integrate front and rear brakes to an even greater extent than current systems?

(2) Should the agency anticipate the emergence of completely integrated motorcycle brake systems in which separate control of front and rear brakes by the operator is no longer provided? If so, where should the single brake control be located and why?

(3) How should FMVSS No. 123 be formulated so that it remains relevant if partially or fully integrated motorcycle brake systems become more common?

(4) What brake control locations should FMVSS No. 123 specify now in order to anticipate future developments?

(5) How should FMVSS No. 122, *Motorcycle brake systems*, be revised to accommodate integrated motorcycle brake systems? How should the partial service brake system test be run?

(6) How would the emergence of completely integrated motorcycle brake systems facilitate harmonization of brake regulations where separate front and rear brake application is required?

We would be interested in any test data, crash data, simulation data, or other information that would support any suggested actions in this area.

V. Minor Revisions to Table 1

Column 2 of Table 1 in FMVSS No. 123 specifies motorcycle locations where specified controls must be placed. In three places in Column 2 of Table 1, the abbreviation ''do.'' (for ''ditto'') is used at present. The text that is replaced by ''do.'' is ''Left handlebar'' for item no. 4, ''Horn,'' and ''Right handlebar'' for items no. 9 ''Supplemental engine stop'' and no. 10 ''Front wheel brake.'' Because we are concerned that the term ''do.'' may cause confusion, we propose to replace ''do.'' in the three places it appears in Column 2 of Table 1 with the full text of the location, ''Left handlebar'' or ''Right handlebar,'' as appropriate.

VI. Leadtime

We propose to make the amendments effective 12 months after the final rule is published, but to allow optional early compliance 30 days after the final rule is published. We believe that because this proposal would permit controls for rear motorcycle brakes to be placed on left motorcycle handlebars, a regulatory restriction would be lifted, and motorcycles that do not presently meet FMVSS No. 123 would be permitted. All other existing motorcycles would also meet the provisions of the proposed

rule. Public comment is sought whether 12 months would be enough lead time for industry to comply with the new requirements and whether to permit optional early compliance with the provisions of an amended FMVSS No. 123.

VII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''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 the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

For the following reasons, we believe that this proposal, if made final, would not have any cost effect on motor vehicle manufacturers. If made final, this rule would have no substantive effect on motorcycles that are already manufactured for the U.S. market. If made final, this rule would facilitate the import of motorcycles that do not meet present requirements for the location of motorcycle rear brake controls. If made final, this rule would have a slight economic benefit to manufacturers of the import motorcycles, which would not have to design and build separate motorcycles for the U.S. market and for Europe and Japan.

Because the economic impacts of this proposal are so minimal (*i.e.*, the annual effect on the economy is less than $100 million), no further regulatory evaluation is necessary.

B. Executive Order 13132 (Federalism)

Executive Order 13132 requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this proposed rule, if made final, would apply to motorcycle manufacturers, not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this proposed rule.

C. Executive Order 13045 (Economically Significant Rules Affecting Children)

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health or safety risks that disproportionately affect children. This proposed rule, if made final, would make changes affecting only to motorcycle manufacturers. Many States do not permit children under 18 years of age to be licensed to drive motorcycles, or to be passengers on motorcycles.

D. Executive Order 12778 (Civil Justice Reform)

Pursuant to Executive Order 12778, ''Civil Justice Reform,'' we have considered whether this proposed rule would have any retroactive effect. We conclude that it would not have such an effect.

Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require

Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The Agency Administrator considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certifies that this proposal would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is that this proposal, if made final, would have no effect on small U.S. motorcycle manufacturers. The small manufacturers already manufacture motorcycles that meet the present motorcycle rear brake control requirements and that would met the proposed amendments to the rear brake control requirements.

F. National Environmental Policy Act

We have analyzed this proposal for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

G. Paperwork Reduction Act

NHTSA has determined that, if made final, this proposed rule would not impose any ''collection of information'' burdens on the public, within the meaning of the Paperwork Reduction Act of 1995 (PRA). This rulemaking action would not impose any filing or recordkeeping requirements on any manufacturer or any other party.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have decided to propose (as one of the proposed regulatory alternatives), the rear brake control location specified in ECE Regulation No. 60, Addendum 59, which allows a platform-equipped, motorcycle, *i.e.*, a scooter, to have its rear brake controlled by a lever on the left handlebar if the scooter has an automatic transmission.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This proposal would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Data Quality Guidelines

After reviewing the provisions of this NPRM pursuant to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (''Guidelines'') issued by the Office of Management and Budget (OMB) (67 FR 8452, Feb. 22, 2002) and issued in final by the Department of Transportation (DOT) on October 1, 2002 (67 FR 61719), NHTSA has determined that if made final, nothing in this rule would result in ''information dissemination'' to the public, as that term is defined in the Guidelines.

If a determination were made that public distribution of data resulting from this rule constituted information dissemination and was, therefore, subject to the OMB/DOT Guidelines, then the agency would review the information prior to dissemination to ascertain its utility, objectivity, and integrity (collectively, ''quality''). Under the Guidelines, any ''affected person'' who believed that the information ultimately disseminated by NHTSA was of insufficient quality could file a complaint with the agency. The agency would review the disputed information, make an initial determination of whether it agreed with the complainant and notify the complainant of its initial determination. Once notified of the initial determination, the affected person could file an appeal with the agency.

K. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

L. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may

attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

2. On that page, click on ''search.''

3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Does the Federal Privacy Act Apply to My Public Comments?

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that the Federal Motor Vehicle Safety Standards (49 CFR part 571), be amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.123 of title 49, Code of Federal Regulations, would be amended by revising S5.2.1 and revising table 1 to read as follows:

§ 571.123 Motorcyle controls and displays.

* * * * *

S5.2.1. *Control location and operation.* If any item of equipment listed in Table 1, Column 1, is provided, the control for such item shall be located as specified in Column 2, and operable as specified in Column 3. Each control located on a right handlebar shall be operable by the operator's right hand throughout its full range without removal of the operator's right hand from the throttle. Each control located on a left handlebar shall be operable by the operator's left hand throughout its full range without removal of the operator's left hand from the handgrip. If a motorcycle with an automatic clutch is equipped with a supplemental rear brake control, the control shall be located on the right side, shall be operable by the operator's right foot, and shall provide brake actuation identical to that provided by the rear brake control required by Table 1, Item 11, of this Standard. If a motorcycle is equipped with self-proportioning or antilock braking devices utilizing a single control for front and rear brakes, the control shall be located and operable in the same manner as a rear brake control, as specified in Table 1, Item 11, and in this paragraph.

* * * * *

TABLE 1.—MOTORCYCLE CONTROL LOCATION AND OPERATION REQUIREMENTS

Equipment Control—Column 1	Location—Column 2	Operation—Column 3
1 Manual clutch or integrated clutch and gear change.	Left handlebar	Squeeze to disengage clutch.
2 Foot-operated gear change	Left foot control	An upward motion of the operator's toe shifts transmission toward lower numerical gear ratios (commonly referred to as ''higher gears''), and a downward motion toward higher numerical gear ratios (commonly referred to as lower gears''). If three or more gears are provided it shall not be possible to shift from the highest gear directly to the lowest gear, or vice versa.
3 Headlamp upper-lower beam control.	Left handlebar	Up for upper beam, down for lower beam. If combined with the headlight on-off switch, means shall be provided to prevent inadvertent actuation of the ''off'' function.
4 Horn	Left handlebar	Push to activate.
5 Turn signal lamps	Handlebars	
6 Ignition		''Off''—counterclockwise from other positions.
7 Manual fuel shutoff control		Rotate to operate. ''On'' and ''Off'' are separated by 90 degrees of rotation. ''Off'' and ''Reserve'' (if provided) are separated by 90 degrees of rotation. Sequence order: ''On''—''Off''—''Reserve''.
8 Twist-grip throttle	Right handlebar	Self-closing to idle in a clockwise direction after release of hand.
9 Supplemental engine stop	Right handlebar	
10 Front wheel brake	Right handlebar	Squeeze to engage.
11 Rear wheel brake	Right foot control [1]	Depress to engage
	Left handlebar for any motorcycle without a clutch lever.	Squeeze to engage.

[1] *See* S5.2.1 for requirements for vehicles with a single control for front and rear brakes, and with a supplemental rear brake control.

* * * * *

3. In the alternative to the changes proposed by the preceding amendment, Section 571.123 of title 49, Code of Federal Regulations, would be amended by adding a definition of ''scooter'' in the correct alphabetical order to S4, by revising S5.2.1, and by revising table 1, to read as follows:

* * * * *

S4. *Definitions.*

* * * * *

Scooter means a motorcycle having a platform for the operator's feet or having footrests integrated into a platform.

* * * * *

S5.2.1 *Control location and operation.* If any item of equipment listed in Table 1, Column 1, is provided, the control for such item shall be located as specified in Column 2, and operable as specified in Column 3. Each control located on a right handlebar shall be operable by the operator's right hand throughout its full range without removal of the operator's right hand from the throttle. Each control located on a left handlebar shall be operable by the operator's left hand throughout its full range without removal of the operator's left hand from the handgrip. If a motorcycle with an automatic clutch other than a scooter is equipped with a supplemental rear brake control, the control shall be located on the left handlebar. If a scooter with an automatic clutch is equipped with a supplemental rear brake control, the control shall be on the right side and operable by the operator's right foot. The supplemental brake control shall provide brake actuation identical to that provided by the required control of Table 1, Item 11, of this Standard. If a motorcycle is equipped with self-proportioning or antilock braking devices utilizing a single control for front and rear brakes, the control shall be located and operable in the same manner as a rear brake control, as specified in Table 1, Item 11, and in this paragraph.

* * * * *

TABLE 1.—MOTORCYCLE CONTROL LOCATION AND OPERATION REQUIREMENTS

Equipment Control—Column 1	Location—Column 2	Operation—Column 3
1 Manual clutch or integrated clutch and gear change.	Left handlebar	Squeeze to disengage clutch.
2 Foot-operated gear change	Left foot control	An upward motion of the operator's toe shifts transmission toward lower numerical gear ratios (commonly referred to as ''higher gears''), and a downward motion toward higher numerical gear ratios (commonly referred to as lower gears''). If three or more gears are provided, it shall not be possible to shift from the highest gear directly to the lowest, or vice versa.
3 Headlamp upper-lower beam control.	Left handlebar	Up for upper beam, down for lower beam. If combined with the headlight on-off switch, means shall be provided to prevent inadvertent actuation of the ''off'' function.
4 Horn	Left handlebar	Push to activate.
5 Turn signal lamps	Handlebars	
6 Ignition		''Off''—counterclockwise from other positions.

TABLE 1.—MOTORCYCLE CONTROL LOCATION AND OPERATION REQUIREMENTS—Continued

Equipment Control—Column 1	Location—Column 2	Operation—Column 3
7 Manual fuel shutoff control		Rotate to operate. ''On'' and ''Off'' are separated by 90 degrees of rotation. ''Off'' and ''Reserve'' (if provided) are separated by 90 degrees of rotation. Sequence order: ''On''—''Off''—''Reserve''.
8 Twist-grip throttle	Right handlebar	Self-closing to idle in a clockwise direction after release of hand.
9 Supplemental engine stop	Right handlebar	
10 Front wheel brake	Right handlebar	Squeeze to engage.
11 Rear wheel brakes	Right foot control [1]	Depress to engage.
	Left handlebar for a motor-driven cycle and for a scooter with an automatic clutch.	Squeeze to engage.

[1] *See* S5.2.1 for requirements for vehicles with a single control for front and rear brakes, and with a supplemental rear brake control.

Issued on: November 13, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–28943 Filed 11–20–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 110303B]

Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and the Gulf of Alaska, King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands, Scallop and Salmon Fisheries off the Coast of Alaska

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

ACTION: Notification of a call for proposals for Habitat Areas of Particular Concern (HAPCs) and associated fishery management measures.

SUMMARY: NMFS and the North Pacific Fishery Management Council are soliciting proposals for specific HAPCs that could be identified and managed within Essential Fish Habitat (EFH) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Council has identified two priority habitat types for consideration during this call for proposals, and the Council plans to solicit additional proposals every three years.

DATES: Proposals must be submitted by January 10, 2004.

ADDRESSES: Proposals should be submitted to the North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Cathy Coon, (907) 271–2809.

SUPPLEMENTARY INFORMATION: The regulatory guidelines for implementing the EFH provisions of the Magnuson-Stevens Act encourage Fishery Management Councils to identify specific types or areas of habitat within EFH as HAPCs based on one or more of the following considerations: (1) The importance of the ecological function provided by the habitat; (2) The extent to which the habitat is sensitive to human-induced environmental degradation; (3) Whether, and to what extent, development activities are, or will be, stressing the habitat type; and (4) The rarity of the habitat type (50 CFR 600.815(a)(8)). HAPC designations provide an opportunity for Councils to highlight especially valuable and/or vulnerable areas within EFH that warrant priority consideration for conservation and management.

NMFS and the Council are developing an environmental impact statement (EIS) for the EFH components of Council fishery management plans (FMPs). As discussed in a previous notification published in the **Federal Register** (August 20, 2003, 68 FR 50120), the EIS will evaluate alternative approaches for identifying HAPCs, and NMFS and the Council will consider specific HAPC designations in separate National Environmental Policy Act analyses.

The Council has identified the following two HAPC priority areas for 2003:

1. Seamounts in the Exclusive Economic Zone off Alaska, named on NOAA nautical charts, that provide important habitat for managed species.

2. Largely undisturbed, high relief, long lived hard coral beds, with particular attention in the Aleutian Islands, which provide habitat for life stages of rockfish or other important managed species. Based upon best available scientific information, nominated coral sites must have likely or documented presence of Council managed rockfish species, must be largely undisturbed, and must occur outside core fishing areas.

NMFS and the Council are soliciting proposals for specific HAPCs. Proposals will be ranked according to how many of the four HAPC considerations they meet, with the highest ranking given to proposals that meet all four. The Council determined that successful proposals must meet at least two of the four HAPC considerations, and that rarity of the habitat type will be a mandatory criterion of all HAPC proposals. Proposals will be screened by Council staff and reviewed by Council Plan Teams, and then the Council will decide which proposals warrant detailed analysis and public comment. NMFS will promulgate any resulting regulations, supported by appropriate analyses, no later than August 13, 2006. The Council plans to solicit additional HAPC proposals every three years.

Proposals should include the following information:

1. Name of proposer, address, and affiliation;

2. Title of proposal and a single, brief paragraph concisely describing the proposed action;

3. Identification of the habitat and FMP species the HAPC proposal is intended to protect;

4. Statement of purpose and need;

5. Description of whether and how the proposed HAPC addresses the four considerations set out in the EFH regulations;

6. Specific objectives for the proposal, including proposed management measures and their specific objectives, if appropriate;

7. Proposed solutions to achieve these objectives (how might the problem be solved);

8. Methods of measuring progress towards those objectives;

9. Expected benefits to the FMP species of the proposed HAPC, and supporting information or data;