economic impact on a substantial number of small entities. This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title III of the Unfunded Mandates Reform Act (UMRA) (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

Executive Order 13132—Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure State and local government officials have an opportunity to provide input in the development of regulatory policies 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 governments. This rule imposes no regulatory requirements or costs on any State or local governments, therefore, it does not have federalism implications under Executive Order 13132.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Again, this rule imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000).

Executive Order 13045—Protection of Children from Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because this rule does not involve technical standards.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2) and will be effective on February 6, 2003.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—land, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 1, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.36 [Amended]

2. Section 131.36 is amended by removing and reserving paragraph (d)(7).

[FR Doc. 02–28497 Filed 11–7–02; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 244

[FRA Docket No. 1999–4985, Notice No. 5]

RIN 2130–AB24

Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, and Acquisitions of Control

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: On March 15, 2002, the Federal Railroad Administration (''FRA'') and the Surface Transportation Board (''STB'' or ''Board'') published joint final rules on regulations on safety integration plans (''SIPs'' or ''plans'') governing railroad mergers, consolidations, and acquisitions of control, and procedures governing the STB's consideration of SIPs in cases involving these type of transactions. Two interested parties filed petitions for reconsideration of FRA's final rule, addressing certain issues and concerns relating to the agency's rule text or regulatory impact statement. (The Board received no petitions for reconsideration of its final rule.) In this document, FRA responds to the petitions and clarifies and amends discrete provisions of the final rule, where appropriate.

DATES: *Effective Date:* The amendments to the final rule are effective November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Jon Kaplan, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6053 and E-mail: *jonathan.kaplan@fra.dot.gov).*

SUPPLEMENTARY INFORMATION:

Background

On March 15, 2002, FRA and the STB published joint final rules in the

Federal Register establishing procedures for developing and implementing SIPs by a Class I railroad proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations. 67 FR 11582, 11604, and 11607, March 15, 2002. The effective date of the final rules was April 15, 2002. *Id.* at 11583. FRA and the STB invited interested persons to file petitions for reconsideration of the final rules, *id.*, with FRA requiring that a petition summarize the complaint and explain ''why compliance with the rule is not possible, is not practicable, is unreasonable, or is not in the pubic interest.'' 49 CFR 211.29(a).

Two parties—the Association of American Railroads (''AAR'') and the Canadian National Railway Company (''CN'') filed petitions with FRA, seeking amendments to FRA's final rule governing SIPs. (The STB received no petitions and accordingly, its final rule remains unchanged.) The parties request that FRA revise its regulations concerning the approval of SIPs and SIP amendments and personnel staffing information required in a SIP. (Collaterally, CN raises questions about the agency's Regulatory Impact Analysis (''RIA'') and information collection requirements (''ICRs'') under the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.*)

In response to the petitions, FRA agrees that certain amendments to its final rule are warranted. The changes, which are fully discussed in the ''Section-by-Section Analysis'' portion of the preamble, are practicable and consistent with the public interest. The agency, however, denies other aspects of the petitions for the reasons provided below.

Discussion of Petitions for Reconsideration

A. Disposition of Proposed SIPs and Amendments Thereto

1. Petitions for Reconsideration

As summarized earlier, the AAR and CN request that FRA reconsider the regulation governing the approval of SIPs and SIP amendments. Under § 244.19, FRA reviews and approves a railroad's SIP based on the plan's ''reasonable assurance of safety at every step of a transaction,'' and the company's execution of the elements in the plan, including any amendments thereto. *See* 49 CFR 244.19(a), (b) at 67 FR 11607. Both the AAR and CN take issue with the agency's formal review process codified in the rule text. They assert that FRA's authority to approve a SIP, and amendments to it, seems to duplicate the STB's approval of the transaction as a whole. The petitioners also claim that the paradigm invites confusion and uncertainty in the application process vis-a-vis FRA's and the STB's respective roles.

Concurrently, the AAR and CN maintain that the process does not promote flexibility in responding to new information and experience that an informal iteration process facilitates. During an application process, the parties assert that integration plans, targets, and programs are fluid based on new information received, experience of the parties that are participants in the transactions, and unforeseen circumstances. CN, for example, cites its mergers with the Illinois Central Railroad Company [1] and the Wisconsin Central Transportation Corporation [2] in support of establishing an informal ''collaborative relationship'' with FRA in developing and implementing SIPs rather than the formal approval process currently provided in FRA's SIP rules. Petition of Canadian National Railway Company for Reconsideration of Federal Railroad Administration Rules (''CN Petition'') 5 (filed April 5, 2002). Informal consultations, the petitioners reiterate, promote expeditious changes to a plan or its implementation, whereas the approval process invites delay in reviewing a SIP and correspondingly, imposes added costs on the applicant. At bottom, the AAR and CN suggest that FRA amend its rule to reflect the agency's consultative role on SIPs in past mergers.

In the event that FRA maintains the SIP approval requirement, the petitioners ask the agency to modify the procedures for handling SIP amendments. The parties submit that the current amendment process, which requires the agency to approve all amendments to a plan that are requested by an applicant before they take effect, should be changed to authorize approval of any amendment filed with FRA absent any objections by the agency. The AAR and CN propose that the amendment would promote flexibility in addressing a change in circumstances, reduce regulatory delay in the application process, conserve regulatory resources, and facilitate implementation of time-sensitive changes to a SIP while enabling the agency to reject an amendment within its discretion. This change, the parties contend, would prove beneficial to both the regulated community and FRA without any compromise to railroad safety.

2. FRA's Response to Request That FRA Adopt a Consultative Role Rather Than an Approval Role on SIPs

The basic arguments advanced by the petitions in support of their position that FRA should adopt the informal SIP consultative process used in the past were fully considered and rejected by the agency when it issued the final rule. The agency's reasoning was discussed in detail in the preamble to the final rule and is reaffirmed by this response to the petitions for reconsideration. Rather than fully restating this discussion, FRA will only lightly touch upon some of the points made in the preamble.

First, the agency restates that a SIP and its implementation present critical safety issues during the merger, consolidation, or acquisition of a Class I or Class II railroad. FRA's approval process provides a mechanism to oversee railroad operations subject to a transaction and enables the agency to exercise its expertise in the railroad disciplines—operating practices, motive power and equipment, signal and train control, track safety, and hazardous materials—that are the subject of those operations. *See* 67 FR 11585. FRA believes that its approval process will provide a forum for the agency to coordinate informally with an applicant in approving a SIP and monitoring its implementation, thereby meeting the flexibility needs of an applicant. *See id.* at 11586, 11599. FRA thus concludes that an approval process regulates the safety aspects of a SIP in a coordinated, consistent, and efficient manner.

Second, FRA disagrees with the petitioner's assertion that its approval process overlaps with the STB's approval process. As the agency explained in its final rule:

> FRA believes that it and the STB have so interpreted their respective statutes and jurisdiction as to reconcile them seamlessly, thereby serving the public interest by assuring that all parts of the affected statutes are given effect and the purposes of Congress are fully carried out.

Id. at 11585. FRA recognizes that it has ''primary jurisdiction, expertise, and oversight responsibility in rail safety

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[1] *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company,* STB Finance Docket No. 33556 (STB Decision Nos. 5 and 6, served June 23, 1998, and Aug. 14, 1998) (hereinafter ''*CN/IC*'').

[2] *Canadian National Railway Company, et al.—Control—Wisconsin Central Transportation Corporation. et al.*, STB Finance Docket No. 34000, 66 FR 23757 (May 9, 2001) (hereinafter ''*CN/WCTC*'').

matters,'' *id.* at 11586, whereas the STB ''has sole authority to regulate * * * economic transactions.'' *Id.* at 11585. Within this rubric, the agencies have framed their respective roles in the SIP process, with FRA reviewing and approving or disapproving plans and the implementation thereof, and the STB approving or vetoing a proposed transaction. *See id.* at 11587. FRA's role is to ''provide expert advice to the STB on safety issues presented by a proposed transaction,'' *id.*, by filing its findings and conclusions on a SIP to the STB, which then independently reviews the transaction and plan. *See* 49 CFR 1106.4(b). Therefore, FRA's and the STB's final rules clearly define the roles and responsibilities of the respective agencies, obviating any confusion or duplication during the application process.

More important, FRA posits that the approval process is necessary to provide a baseline for enforcement. Contrary to the consultative process proposed, an approval process enables the agency to take enforcement action if a railroad fails either to obtain an approved SIP or implement the approved plan. *See* 67 FR 11586, 11599. Such remedies include assessing civil penalties, issuing compliance, disqualification, or emergency orders, seeking the issuance of an injunction, or referring certain matters to the Department of Justice for criminal investigation and prosecution. *See id.* at 11591–92; 63 FR 72225, 72229, Dec. 31, 1998. Put another way, the approval process ensures that an applicant ''obtain[s] agency approval of a proposed SIP before implementing a regulated transaction.'' 67 FR 11592. SIP compliance and railroad safety thus mandate that FRA retain the approval process. Accordingly, FRA reaffirms its approval process and denies the petitioners' request to eliminate the formal SIP approval provision from its regulations at § 244.19(b).

3. FRA's Response to Request That FRA Modify Its Procedures for Handling SIP Amendments

FRA agrees with the petitioners that amendments to a SIP should be presumed approved unless it rejects the changes because the modifications do not, *e.g.*, provide a logical and workable transition or are insufficiently detailed to provide ''a reasonable assurance of safety.'' *See id.* at 11586; 49 CFR 244.19(a). The AAR proposed that the amendments become effective 20 days after their submission to FRA unless rejected by the agency. This is too short of a time period for adequate agency review of amendments that may have serious safety consequences. Instead, FRA will amend § 244.19(c)(1) to provide for a 30-day review period before proposed amendments can become effective absent earlier FRA approval or disapproval.

B. Personnel Staffing

1. Petition for Reconsideration

The AAR requests that FRA modify the personnel staffing rule (49 CFR 244.13(j)). As currently worded, § 244.13(j) requires an applicant to identify in its SIP the number of current and proposed employees in each of eight job classification categories when there is a projected change of operations that will impact workforce duties or responsibilities. The AAR requests that § 244.13(j) be changed to require the applicant to provide information on personnel staffing with respect to only those job categories that are impacted by a transaction. The organization believes that this modification would narrow the safety issues of job categories that an applicant would be required to address, obviating the need to file extraneous or irrelevant personnel staffing information in a plan.

2. FRA's Response

FRA agrees with the AAR's suggestion that § 244.13(j) should be clarified, and has adopted the language proposed by the organization. The agency intended to require a railroad to ''only address the personnel staffing element when it project[ed] a change of operations that [would] impact workforce duties or responsibilities.'' 67 FR 11597. An applicant ''may omit this section if it expects operations will remain constant after the transaction is consummated.'' *Id.*

C. Regulatory Evaluation Concerns

1. Petition for Reconsideration

In its petition, CN questions FRA's RIA based on its experience in the *CN/IC* and *CN/WCTC* mergers. Specifically, CN argues that the agency erred in its cost/benefits analysis because the costs identified are based on transactions that were consummated before the final rule was effective, and the benefits identified do not show any material gain in adopting a formal rather than an informal review process. Consequently, CN contends that the agency's regulatory impact statement is arbitrary and capricious, in violation of the Administrative Procedure Act, 5 U.S.C. 706(2)(A).[3]

[3] CN also alleges in a footnote that FRA's costs associated with the ICRs in its final rule appear to be ''unrealistically low.'' *See* CN Petition at 9 n. 6. The railroad cites no authority and provides no basis for the allegation. Absent evidence to the contrary, FRA maintains that the ICRs, which the Office of Management and Budget reviewed and approved, are accurate and satisfy the requirements under the PRA.

2. FRA's Response

FRA believes that CN's analysis is misplaced. Consistent with Executive Order 12866, the agency issued its RIA that evaluated the potential costs and benefits of its final rule, and addressed the assumptions, inferences, and conclusions employed in its assessment. *See* 67 FR 11600–01. The cost estimates are premised on the transactions cited in the final rules, namely, the *Conrail Acquisition*,[4] which was the first transaction in which the parties—Norfolk Southern Railway Company and CSX Transportation, Incorporated—prepared SIPs. The agency analyzed the railroads' individual and collective expenses in establishing the cost figures identified in its final rule. Evidence in the administrative record supports the cost estimates, which FRA incorporated in the preamble to its final rule. *See id.* at 11600.

Likewise, the benefits measured are founded on, for example, the merger of the Union Pacific Railroad Company and the Southern Pacific Transportation Company and societal losses associated with the service difficulties caused by the disruption of safety and operating practices during the merger. *See id.* The RIA also considered alternatives to the rulemaking action, but concluded that the SIP process ensured that safety programs were continued and closely monitored. *See id.* Accordingly, FRA's assessment satisfies the regulatory analysis requirements under the Executive Order.

Finally, FRA notes that CN's efforts to draw a distinction between voluntary and required information filed in a SIP is irrelevant. The model used in the RIA is predicated on a SIP/no SIP analysis because SIPs were not prepared as a matter of normal business practice before the *Conrail Acquisition* proceeding. *See* 63 FR 72228; *Conrail Acquisition*, STB Decision No. 52, served Nov. 3, 1997. This model provides the necessary analytical tools in determining the costs and benefits associated with the rule given the lack of any such planning before the *Conrail Acquisition*. *See* Administrative Conference of the United States Recommendation 85–02, *Agency Procedures for Performing Regulatory Analysis of Rules*, 50 FR 28364, July 12,

[4] *CSX Corporation and CSXT Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (hereinafter ''*Conrail Acquisition*'').

1985 (agency should discuss selected set of models employed in regulatory analysis). FRA submits that this model comports with the Executive Order and thus withstands judicial review. *See Center for Auto Safety v. Peck*, 751 F.2d 1336, 1342 (D.C. Cir. 1985) (court will not substitute its judgment for that of an agency ''when the agency is called upon to weigh the costs and benefits of alternative policies, since such cost-benefit analyses epitomize the types of decisions that are most appropriately entrusted to the expertise of an agency'') (internal quotations and citation omitted); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983) (''arbitrary and capricious'' standard of review requires an agency to ''examine the relevant data and articulate a satisfactory explanation for its action, [including] a rational connection between the facts found and the choice made''); *Western Coal Traffic League* v. *Surface Transportation Board*, 216 F.3d 1168, 1177 (D.C. Cir. 2000) (agency action is not arbitrary and capricious when it provides ''ample opportunity for public comment in its proceeding [and] ample justification for its decision''); *State of Louisiana* v. *Verity*, 853 F.2d 322, 327 (5th Cir. 1988) (''agency's decision need not be ideal * * * so long as [it] gave at least minimal consideration to relevant facts contained in the record'').

Section-by-Section Analysis

FRA is making minor modifications to certain provisions of 49 CFR part 244 in response to the petitions for reconsideration. This section of the preamble explains the changes made to the final rule in response to the petitions. FRA respectfully refers interested parties to the agency's Section-by-Section Analysis of the final rule and the Notice of Proposed Rulemaking for a full discussion of those aspects of the rulemaking action that remain unchanged. *See* 67 FR 11590–600; 63 FR 72228–35.

Subpart B—Safety Integration Plans

Section 244.13(j)—Personnel Staffing

Paragraph (j) of this section is modified in response to the AAR's suggestion that the regulatory text be clarified to reflect that an applicant need only provide information on personnel staffing with respect to those job categories that are impacted by a transaction. The amendment requires an applicant to identify the number of employees by job category, currently and proposed, to perform the types of functions enumerated at § 244.13(j)(1)–(8) when there is a projected change of operations that will impact workforce duties or responsibilities for employees of that job category.

Section 244.19—Disposition

FRA is revising paragraph (c)(1) of this section in response to the AAR's and CN's petitions for reconsideration. As amended, the regulation authorizes an applicant to amend its SIP, provided it explain the need for the amendment and inform FRA about the change. An amendment to a plan is presumed approved and takes effect no sooner than 30 days after it is filed with FRA, unless the agency either approves or disapproves the change within that period. Consistent with FRA's approval of a plan, the agency must determine that the amendment does not provide ''a reasonable assurance of safety'' should it reject the modification. *See* 49 CFR 244.19(a), (b).

FRA agrees with the petitioners that this revision promotes flexibility in enabling a railroad to address a change in circumstances should it decide to amend its SIP. This change, which is consistent with the agency's Railroad Workplace Safety and Qualification and Certification of Locomotive Engineers rules at 49 CFR 214.307(c) and 240.103(c), respectively, facilitates a railroad's ability to implement time-sensitive changes to a plan yet retains agency discretion to intervene should circumstances warrant.

Regulatory Impact of FRA's Final Rule

Executive Order 12866 and DOT Regulatory Policies and Procedures

The response to petitions for reconsideration of the final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. Although the final rule met the criteria for being considered a significant rule under those policies and procedures, the amendments contained in the response to the petitions are not considered significant because they either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule. The economic impact of the amendments and clarifications contained in this response will generally reduce the cost of compliance with the rule.

The cost reduction, however, is not easily quantified and does not significantly alter FRA's original analysis of the costs and benefits associated with the original final rule. Additionally, the agency believes that the modifications and clarifications increase the benefits associated with the final rule by facilitating amendments to a SIP and conserving agency resources in reviewing and approving a plan. Accordingly, FRA reaffirms the economic arguments and estimates advanced in its RIA for the final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (''RFA''), 5 U.S.C. 601 *et seq.*, requires an assessment of the impact of rules on ''small entities.'' FRA certifies that the response to petitions for reconsideration does not have a significant impact on a substantial number of small entities. Because the amendments contained in this document either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, FRA has concluded that there is no substantial economic impact on small units of government, businesses, or other organizations.

Proper Consideration of Small Entities in Agency Rulemaking

The response to petitions for reconsideration of the final rule has been reviewed in accordance with Executive Order 13272 (67 FR 53461, August 16, 2002), which requires agencies to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by RFA. FRA certifies that this rulemaking action does not have a significant economic impact on these entities under the RFA.

Paperwork Reduction Act

The response to petitions for reconsideration of the final rule does not significantly change any of the ICRs contained in the original final rule.

Environmental Impact

FRA has evaluated the response to petitions for reconsideration of the final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action for environmental purposes.

Federalism Implications

The response to petitions for reconsideration of the final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this action does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

Statement of Energy Effects

The response to petitions for reconsideration of the final rule has been reviewed in accordance with Executive Order 13211 (66 FR 28355, May 22, 2001), which requires agencies to prepare a Statement of Energy Effects describing the effects of certain regulatory actions on energy supply, distribution, or use when such measures are identified as ''significant energy actions.'' FRA certifies that this rulemaking action is not a significant energy action to warrant the preparation of such a statement.

List of Subjects in 49 CFR Part 244

Administrative penalties, practice and procedure, Railroad safety, Railroads, Safety Integration Plans.

In consideration of the foregoing, FRA amends part 244 of chapter II of title 49, Code of Federal Regulations, to read as follows:

PART 244—[AMENDED]

1. The authority citation for Part 244 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; Sec. 31001(s)(1), Pub. L. No. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note); and 49 CFR 1.49.

2. Section 244.13 is amended by revising paragraph (j) introductory text to read as follows:

§ 244.13 Subjects to be addressed in a Safety Integration Plan involving an amalgamation of operations.

* * * * *

(j) *Personnel staffing.* Each applicant shall identify the number of employees by job category, currently and proposed, to perform the following types of functions when there is a projected change of operations that will impact workforce duties or responsibilities for employees of that job category:

* * * * *

3. Section 244.19 is amended by revising paragraph (c)(1) to read as follows:

§ 244.19 Disposition.

* * * * *

(c) * * *

(1) *By the applicant.* The applicant may amend its Safety Integration Plan, from time to time, provided it explains the need for the proposed amendment in writing to FRA. Any amendment shall take effect no earlier than 30 days after its submission to FRA, unless it is either approved or disapproved by FRA within that period. Any disapproval of an amendment shall be in accordance with the requirements prescribed in paragraph (b) of this section.

* * * * *

Issued in Washington, DC on October 30, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–28096 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 110102E]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

ACTION: Opening of General category Atlantic bluefin tuna New York Bight set-aside fishery.

SUMMARY: NMFS opens the Atlantic bluefin tuna (BFT) General category New York Bight set-aside fishery. This action is being taken to provide for General category fishing opportunities in the New York Bight.

DATES: Effective 1 a.m. on November 5, 2002, until the date that the set-aside quota is determined to have been taken, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Dianne Stephan, 978–281–9260.

SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT landings quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories. The General category landings quota, including time-period subquotas and the New York Bight set-aside, are specified annually as required under § 635.27(a)(1). The 2002 fishing year General category quota and effort control specifications were issued October 1, 2002 (67 FR 61537).

Opening of the New York Bight Fishery

The New York Bight set-aside area is defined as the waters south and west of a straight line originating at a point on the southern shore of Long Island where the shoreline intersects 72° 27′ W. long. (Shinnecock Inlet) and running SSE 150 true, and north of 38° 47′ N. lat. (Delaware Bay). Under § 635.27(a)(1)(iii), NMFS may make available all or part of the 10 mt landings quota set aside for the New York Bight area when the coastwide General category fishery has been closed in any quota period. NMFS closed the coastwide General category fishery on October 25, 2002 (67 FR 66072). At that time, NMFS announced that it would open the New York Bight fishery when it is determined that large medium and giant BFT are available in the New York Bight area. Allowing a few days transition between the closure of the coastwide fishery and the opening of the New York Bight fishery reduces concerns regarding enforcement of regulations applicable to that area. Based on the presence of large medium and giant BFT in the New York Bight area, fishermen have contacted NMFS requesting an opportunity to participate in this fishery. Since the coastwide General category fishery is closed and large medium and giant BFT are now available in the New York Bight, NMFS will open the New York Bight set-aside fishery effective 1 a.m., November 5, 2002, until the date that the set-aside quota of 10 mt is determined to have been taken, which will be published in the **Federal Register**.

For vessels permitted in the General category: upon the effective date of the New York Bight opening, retaining or landing large medium or giant BFT is authorized only within the set- aside area, until the set aside quota for that area has been harvested. The daily retention limit for the set-aside fishery will be one large medium or giant BFT (measuring 73 inches (185 cm) or larger) per vessel per day. BFT harvested from waters outside the defined set-aside area may not be brought into the set-aside area. General category permit holders may tag and release BFT in all areas while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26.

For vessels permitted in the Highly Migratory Species (HMS) Charter/Headboat category: when participating in the General category New York Bight fishery, i.e., fishing for large medium and giant BFT intended for sale, HMS Charter/Headboat category vessels are subject to the same rules as General category vessels. HMS Charter/Headboat