

(3) If any monitoring point exceeds its specified limit, the licensee must either terminate operation within three hours or reduce power in accordance with the applicable provisions of § 73.1350(d), in order to eliminate any possibility of interference or excessive radiation in any direction.

(4) If operation pursuant to paragraph (c)(3) of this section is necessary, or before the 30 day period specified in paragraph (c)(2) of this section expires, the licensee must request a Special Temporary Authority (STA) in accordance with § 73.1635 to continue operation with parameters at variance and/or with reduced power along with a statement certifying that all monitoring points will be continuously maintained within their specified limits.

(d) In any other situation in which it might reasonably be anticipated that the operating parameters might vary out of tolerance (such as planned array repairs or adjustment and proofing procedures), the licensee shall, before such activity is undertaken, obtain a Special Temporary Authority (STA) in accordance with § 73.1635 in order to operate with parameters at variance and/or with reduced power as required to maintain all monitoring points within their specified limits.

3. Section 73.1350 is amended by revising paragraphs (b)(2) and (d); by redesignating paragraphs (e) through (h) as paragraphs (f) through (i); and by adding a new paragraph (e) to read as follows:

**§ 73.1350 Transmission system operation.**

\* \* \* \* \*

(b) \* \* \*

(2) The transmitter control personnel must have the capability to turn the transmitter off at all times. If the personnel are at a remote location, the control system must provide this capability continuously or must include an alternate method of acquiring control that can satisfy the requirement of paragraph (e) of this section that operation be terminated within 3 minutes.

\* \* \* \* \*

(d) In the event that a broadcast station is operating in a manner that is not in compliance with the applicable technical rules set forth elsewhere in this part or the terms of the station authorization, and the condition is not listed in paragraph (e) or (f) of this section, broadcast operation must be terminated within three hours unless antenna input power is reduced sufficiently to eliminate any excess radiation power. Examples of conditions that require termination of operation within three hours include excessive

power, excessive modulation or the emission of spurious signals that do not result in harmful interference.

(e) If a broadcast station is operating in a manner that poses a threat to life or property or that is likely to significantly disrupt the operation of other stations, immediate corrective action is required. In such cases, operation must be terminated within three minutes unless antenna input power is reduced sufficiently to eliminate any excess radiation. Examples of conditions that require immediate corrective action include the emission of spurious signals that cause harmful interference, any mode of operation not specified by the station license for the pertinent time of day, or operation substantially at variance from the authorized radiation pattern.

\* \* \* \* \*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 219**

**Docket No. FRA 2001-11068, Notice No. 4**

**RIN 2130-AB39**

**Application of FRA Alcohol and Drug Rules to Foreign Railroad Foreign-Based Employees Who Perform Train or Dispatching Service in the United States: Completion of Consultations with Canadian and Mexican Governments and Closure of Comment Period**

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Proposed rule.

**SUMMARY:** Currently, employees of a foreign railroad (a railroad incorporated outside the United States) whose primary reporting point is outside the United States who enter into the United States to perform train or dispatching service (foreign railroad foreign-based employees or "FRFB employees") are subject only to the general conditions, prohibitions, post-accident testing and reasonable suspicion testing requirements in FRA's alcohol and drug regulations (49 CFR part 219). In a December 11, 2001 notice (NPRM) (66 FR 64000), FRA proposed to make FRFB employees, who are presently excepted from the requirements concerning employee assistance programs, random alcohol and drug testing and pre-

employment drug testing, fully subject to part 219 requirements.

In this notice, FRA outlines the likely revisions to the NPRM based, in part, on consultations with the Canadian and Mexican Governments. FRA also announces the closure of the comment period on this rule.

**DATES: Written Comments:** Written comments must be received by August 27, 2003. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number FRA 2001-11068, Notice No. 4] by any of the following methods:

- *Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1-202-493-2251.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

• *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical issues, Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS-11, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone 202-493-6313). For legal issues, Patricia V. Sun, Trial Attorney, Office of the Chief

Counsel, RCC-11, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202-493-6038).

#### SUPPLEMENTARY INFORMATION:

##### Public Participation

FRA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written documents.

We will file in the docket all written comments that we receive, as well as a report summarizing each substantive public contact with FRA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it's possible to do so without incurring expense or delay. We may change this proposal in light of the comments that we receive.

If you want FRA to acknowledge receipt of your comments on the proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

##### Background

As stated above, in December 2001, FRA proposed to amend part 219 by making FRFB employees subject to the employee assistance program, random alcohol and drug testing, and pre-employment drug testing requirements. In May 2002, two months after FRA had held a public hearing and closed the comment period, the Canadian Embassy delivered a diplomatic note objecting to the proposed rule, while in July 2002 the Canadian Human Rights Commission issued a long-awaited policy (Policy) on the alcohol and drug testing of workers. In response to these developments, FRA published a notice (67 FR 75996, December 10, 2002)

which asked for comment on the Policy and reopened the comment period until further notice to allow for additional consultations with Canada and Mexico. Since then, FRA has twice had the opportunity to discuss these issues: first, at the annual Transport Canada/FRA meeting in March 2003 and, more recently, at the Land Transportation Standards Subcommittee meeting in May 2003. At the latter meeting FRA also discussed the NPRM with representatives of the Mexican Government; the Mexican representatives indicated that Mexico would be issuing regulations in the near future that would be compatible with FRA's rules.

Based upon the considerations discussed among FRA and the representatives of the Canadian and Mexican governments, as well as other comments to the docket, FRA intends to issue a final rule that would revise the NPRM as outlined below. FRA believes that the final rule will reasonably address the concerns which Canadian and Mexican representatives expressed during the consultation process. FRA will, of course, carefully consider any comments that are filed when issuing the final rule.

1. The proposed rule will be made final, but with significant revisions.

2. FRA will include in the final rule an exclusion permitting foreign-based employees of foreign railroads to enter into the United States to perform train or dispatching service for a distance of up to 10 route miles under the present exceptions (which will have the effect of facilitating interchange with U.S. railroads at the majority of current gateways). FRA will work with Transport Canada to confirm the locations and mileage of existing Canadian gateways.

3. FRA will entertain and consider requests for waiver in other circumstances where consistent with railroad safety and in the public interest. Existing crew assignments will remain subject to the current exceptions until waiver requests can be considered on their merits, provided such requests are filed within 120 days of the publication of the final rule.

4. Obligations of foreign railroads with respect to testing may, at the election of the railroad, be conducted on U.S. soil. Any employee testing positive or refusing a test will be subject to removal from service only with respect to service in the U.S. Canadian and Mexican railroads will otherwise be free to handle such employees under applicable law in their home countries.

5. Even where no exception or waiver applies, FRA will except current

employees from pre-employment drug testing requirements. Only employees entering train or dispatching service in the U.S. after the effective date of the final rule will be required to be pre-employment tested. (This is consistent with FRA's approach to U.S. workers as the pre-employment drug testing program was initiated.) Again, FRA is indifferent to whether specimens are collected in Canada (for Canadian railroads), Mexico (for Mexican railroads), or the U.S., so long as United States Department of Transportation workplace procedures (49 CFR part 40) are observed and records are maintained as required. Canadian and Mexican employers remain free to retain any employee testing positive or refusing a test, although these employees may not be used for service in the U.S.

6. The final rule will also allow FRA's Associate Administrator for Safety to recognize a foreign government's program as compatible to that of FRA. To be so recognized, the foreign government program must include the essential elements of part 219, including pre-employment testing and random testing, and adopt testing procedures, criteria and assays equivalent to those used in part 40. Once granted, program recognition remains valid so long as the program retains these elements and foreign-based railroads comply with the program's requirements.

FRA believes that the approach outlined above is the best compromise that can be fashioned to accommodate the concerns of some commenters while continuing to be responsible for control of alcohol and drug use in railroad operations within U.S. borders.

Issued in Washington, DC on July 22, 2003.

**Allan Rutter,**

*Federal Railroad Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[I.D. 072103A]

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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