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Department of Transportation

Federal Railroad Administration

49 CFR Part 219

**Control of Alcohol and Drug Use: Notice
Inviting Comment on July 2002 Canadian
Human Rights Commission Policy on
Alcohol and Drug Testing; Proposed Rule**

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Part 219**

[Docket No. FRA 2001–11068, Notice No. 3]

RIN 2130–AB39

**Control of Alcohol and Drug Use:
Notice Inviting Comment on July 2002
Canadian Human Rights Commission
Policy on Alcohol and Drug Testing**

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Proposed rule; extension of comment period until further notice.

SUMMARY: In general, FRA's regulation on the control of alcohol and drug use currently applies to all railroads that operate on the general railroad system of transportation in the United States. In a December 11, 2001, notice of proposed rulemaking (NPRM), FRA proposed to amend the regulation to narrow the scope of its current exemption of certain operations by foreign railroads and small railroads from full application of FRA's requirements. Under the NPRM, an employee of a foreign railroad (a railroad incorporated outside the United States) whose primary reporting point is outside the United States (a foreign railroad foreign-based or "FRFB employee"), who performs train or dispatching service in the United States covered by hours of service laws would no longer be exempt from the pre-employment drug testing, random alcohol and drug testing, and employee assistance program requirements of part 219. FRA held a public hearing on February 14, 2002, and extended the comment period until March 14 to allow interested parties time to supplement the record. (FRFB signal service employees, who are few in number, would continue to be exempt from pre-employment testing, random testing, and employee assistance program requirements.) Elsewhere in today's **Federal Register**, FRA is publishing a Final Rule that, with some amendments, continues in effect an Interim Final Rule requiring all dispatching of railroad operations that occur in the United

States to be performed in the United States, with some limited exceptions.

On July 10, 2002, the Canadian Human Rights Commission Policy on Alcohol and Drug Testing (Policy) was published. (A copy of the Policy has been placed in the docket of this rulemaking). In accordance with the North American Free Trade Agreement (NAFTA), FRA is seeking the least-trade-impact solution in furtherance of its national rail safety goals. As part of this process, FRA invites comment on the Policy, which was issued almost four months after the public comment period on the NPRM closed. FRA will keep the comment period open until further notice while it engages in further consultations with the Governments of Canada and Mexico on the safety issues involved in the NPRM.

ADDRESSES: Anyone wishing to file a comment should refer to the FRA docket and notice numbers (FRA Docket No. FRA 2001–11068, Notice No. 3). You may submit your comments and related material by only one of the following methods:

By mail to the Docket Management System, U.S. Department of Transportation, room PL–401, 400 7th Street, SW., Washington, DC 20590–0001; or

Electronically through the Web site for the Docket Management System at <http://dms.dot.gov>. For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the "Help" menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at <http://dms.dot.gov>.

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: As briefly summarized above, on December 11, 2001 (66 FR 64000), FRA proposed to amend its regulation on the control of alcohol and drug use (49 CFR part 219) to narrow the scope of exemptions for FRFB employees and for small railroads. The most controversial part of the NPRM was its proposal to make FRFB employees who perform train or dispatching service in the United States subject to part 219's random alcohol and drug testing requirements. The Embassy of Canada has filed a letter that questioned the need for the NPRM, and requested that FRA withdraw the NPRM, and work with Transport Canada to establish a Canada-United States rail safety working group that would explore areas of bilateral cooperation and exchange information on each country's respective regulations, laws and statistics.

FRA is unwilling to withdraw the NPRM, as requested by the Embassy of Canada, but is willing to extend the comment period until further notice to allow for further consultations between FRA and the Governments of Canada and Mexico on the safety issues involved in the rulemaking. FRA will be contacting the Governments of Canada and Mexico to set up these consultations. FRA will provide interested parties an opportunity to comment on the results of the consultations before FRA makes a final decision on the rulemaking. In light of the major Alcohol and Drug Testing Policy issued by the Canadian Human Rights Commission last month, a copy of which has been placed in the docket, FRA invites additional public comment on the Policy's impact on the legal requirements for workplace alcohol and drug testing in Canada.

Issued in Washington, DC, on November 26, 2002.

Allan Rutter,

Federal Railroad Administrator.

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