

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 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 22, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

- 1. In Part 180:
 - a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

- b. Section 180.292 is amended by designating the existing text as paragraph (a), adding a paragraph heading and designating the text following the paragraph heading as paragraph (a)(1); by adding and reserving with headings paragraphs (b) and (c); and by adding paragraph (d) to read as follows:

§ 180.292 Picloram; tolerances for residues.

- (a) *General.* (1) * * *
- (b) *Section 18 emergency exemptions.*
[Reserved]
- (c) *Tolerances with regional registrations.* [Reserved]
- (d) *Indirect or inadvertent residues.*
Tolerances are established for indirect or inadvertent residues of the herbicide picloram, 4-amino-3,5,6-trichloropicolinic acid, from application of its potassium form on barley, fallow cropland, oats, and wheat in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/Revocation Date
Aspirated grain fractions	4.0	12/31/00
Sorghum grain ..	0.3	12/31/00
Sorghum grain, forage	0.2	12/31/00
Sorghum grain, stover	0.5	12/31/00

PART 185—[AMENDED]

- 2. In Part 185:
 - a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.4850—[Partially Redesignated and Removed]

- b. The text of § 185.4850, including the table, is redesignated as paragraph (a)(2) of § 180.292. The remainder of § 185.4850 is removed.

PART 186—[AMENDED]

- 3. In Part 186:
 - a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 371.

§ 186.4850 [Partially Redesignated and Removed]

- b. The text of § 186.4850, including the table, is redesignated as paragraph (a)(3) of § 180.292. The remainder of § 186.4850 is removed.

[FR Doc. 98-34830 Filed 12-31-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Parts 653 and 654

[Docket No. FTA-98-3474]

RIN 2132-AA61

"Maintenance" Under Definition of Safety-Sensitive Functions in Drug and Alcohol Rules

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Transit Administration (FTA) is amending its regulations to require drug and alcohol testing of all maintenance workers, including those engaged in engine, revenue service vehicle, and parts rebuilding and overhaul. This change will eliminate the distinction between

maintenance workers involved in ongoing, daily maintenance and repair work and those who, on a routine basis, perform rebuilding and overhauling work.

EFFECTIVE DATE: February 4, 1999.

FOR FURTHER INFORMATION CONTACT: For program issues: Judy Meade, Director of the Office of Safety and Security (202) 366-2896 (telephone) or (202) 366-7951 (fax). For legal issues: Michael Connelly, Office of the Chief Counsel (202) 366-4011 (telephone) or (202) 366-3809 (fax). Electronic access to this and other rules may be obtained through FTA's Transit Safety Bulletin Board at 1-800-231-2061, or through the FTA World Wide Web home page at <http://www.fta.dot.gov>; both services are available seven days a week.

SUPPLEMENTARY INFORMATION: On March 2, 1998, FTA published a Notice of Proposed Rulemaking (NPRM) proposing to amend its drug and alcohol rules to require testing all maintenance workers, including those engaged in engine, revenue service, and parts rebuilding and overhaul. The NPRM came in response to concern that FTA was permitting a segment of workers who routinely performed safety-sensitive functions to evade otherwise applicable drug and alcohol testing. FTA received 11 comments over a three-month period.

I. "Maintenance"

Comments

Of the 11 comments received, seven favored adoption of the proposed amendment; four commenters opposed. Those in favor of the amendment noted that employees performing routine repair and those performing overhaul and rebuilding should be treated similarly. The workers performing those tasks are drawn, generally, from the same pool of applicants, and perform equally important tasks. Those opposed to the amendment generally focused on a perceived increased cost in securing contractors able to perform overhaul and rebuilding functions. Comments on the NPRM, as well as suggestions from those generally in favor of the amendment, include:

—Three commenters (Bloomington-Normal (Illinois) Public Transit System (B-NPTS)), the Bay Area (California) Transit Drug Testing Task Force, and the Los Angeles County Metropolitan Transportation Authority (LACMTA) expressed concern that "extending" testing to contract maintenance workers would increase the cost to both the grantee and the contractor. The Task Force and LACMTA both suggest that some of their overhaul and rebuilding

work occurs on an irregular, "as needed" basis. The B-NPTS suggests that its contractor should certify those workers who perform maintenance and overhaul work, and subject only those workers to the testing rules.

—New Flyer of America, Inc., an original equipment manufacturer (OEM), believes the FTA should extend its present exemption for OEM work performed under warranty, to any work performed by an OEM, whether under warranty or not. New Flyer suggests that differentiating between OEM warranty and non-warranty work is an "artificial distinction" posing "substantial cost" on OEMs that perform overhaul and rebuilding maintenance work.

—The Washington Metropolitan Area Transit Authority (WMATA) favors adoption of the rule. It further suggests that FTA add the phrase "employees and contractors" to the definition of safety-sensitive employees and delete the word "on-going" before the word "repairs."

Discussion

When these rules were first considered in the early 1990s, and published in February 1994, FTA's underlying assumption was that all maintenance workers who performed a safety-sensitive function would be subject to the rules. As noted in the March 1998 NPRM and below, the 1994 Regulatory Impact Analysis assumed all maintenance workers would be covered by the regulation; at that time, no distinction was made between routine and "less routine" maintenance. In November 1994, the FTA, through a letter of interpretation, created an exemption to the rules' general applicability. Under the exemption, workers performing daily, "routine" maintenance would still be subject to the rule, while those performing what the FTA described as "less routine" work, such as rebuilding and overhauling, were exempt. With this final rule, FTA reverses its position, because to do so is pro-safety (all maintenance workers that perform safety-sensitive work should be subject to the rules) and because similarly situated maintenance workers will be treated equally.

FTA disagrees with the concerns expressed by the Task Force and LACMTA. It is not acceptable that contractors, when performing safety-sensitive work in furtherance of public safety, should be exempt from the rules simply because they are contractors. As noted above, a goal of this rule is to treat similarly situated employees equally. LACMTA and the Task Force would have the FTA treat the grantee's own

employees, or a contractor's employees that perform routine work, differently than a contractor's employee performing rebuilding and overhaul work. Because both kinds of work (on-going routine maintenance and rebuilding/overhaul) are safety-sensitive, we see no reason to distinguish the two.

We agree, though, that if the overhaul/rebuilding work is done on an ad hoc or one-time basis, where there is no long-term contract between the grantee and its contractors, subjecting the contractor's employees to the rules would be unduly burdensome.

FTA disagrees with New Flyer's request that we exempt OEMs completely from the rules, while requiring other maintenance and rebuilding workers and contractors to comply with the rules. We also decline to act on the Amalgamated Transit Union's request that FTA remove the present OEM warranty exemption. We believe the exemption to be a balance between the needs of OEMs to control costs, while at the same time, promoting the safety of the riding public.

FTA intends to keep the phrase "on-going" in the definition, as it appropriately describes the category of repair subject to the rules (on-going, daily repair). As to the suggestion that the definition of safety-sensitive include the phrase "employees and contractors," we note that the rules describe safety-sensitive functions; the rules do not define safety-sensitive persons.

II. Regulatory Analysis and Notices

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no significant Federalism implications to warrant preparation of a Federalism Assessment. The Regulatory impact Analysis used for the original 1994 rules assumed that all maintenance workers would be covered by the rules. By interpretation in 1994, FTA created a limited exemption from testing for safety-sensitive workers who performed "less routine" maintenance such as rebuilding and overhauling engines, parts, and revenue service vehicles. We now eliminate that exemption. Therefore, the Department certifies that this rule will not have a significant economic impact on a substantial number of transit systems; this rule merely restores maintenance workers who overhaul and rebuild engines, parts, and revenue service vehicles to the pool of safety-sensitive workers to be tested. This rule does not contain new information collection requirements for purposes of the

Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. The agency has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking; this rule will cost State, local and tribal governments less than \$100 million annually.

List of Subjects in 49 CFR Parts 653 and 654

Alcohol testing, Drug testing, Grant programs-transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Safety-sensitive, Transportation.

For the reasons set forth in the preamble, FTA is amending Title 49 Code Federal Regulations, parts 653 and 654 as follows:

PART 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority citation for part 653 continues to read as follows:

Authority: 49 U.S.C. 5331, 49 CFR 1.51.

§ 653.7 [Amended]

2. Section 653.7 is amended by revising paragraph (4) in the definition of "safety-sensitive function" to read as follows:

§ 653.7 Definitions.

* * * * *

Safety-Sensitive Function * * *

(4) Maintaining (including repairs, overhaul, and rebuilding) a revenue service vehicle or equipment used in revenue service, unless the recipient receives funding under 49 U.S.C. 5309, is in an area less than 50,000 in population and contracts out such services, or funding under 49 U.S.C. 5311 and contracts out such services.

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PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

1. The authority citation for part 654 continues to read as follows.

Authority: 49 U.S.C. 5331, 49 CFR 1.52.

2. Section 654.7 is amended by revising paragraph (4) in the definition of "safety-sensitive function" to read as follows:

§ 654.7 Definitions.

* * * * *

Safety-Sensitive Function * * *

(4) Maintaining (including repairs, overhaul, and rebuilding) a revenue

service vehicle or equipment used in revenue service, unless the recipient receives funding under 49 U.S.C. 5309, is in an area less than 50,000 in population and contracts out such services, or funding under 49 U.S.C. 5311 and contracts out such services.

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Issued on: December 23, 1998.

Gordon J. Linton,
Administrator.

[FR Doc. 99-111 Filed 1-4-99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 122398E]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Minimum Clam Size for 1999

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

ACTION: Notice of suspension of surf clam minimum size limit.

SUMMARY: NMFS informs the public that the minimum size limit of 4.75 inches (12.065 cm) for Atlantic surf clams is suspended for the 1999 fishing year. The intended effect is to relieve the industry from a regulatory burden that is not necessary as the majority of surf clams harvested are larger than the minimum size limit.

DATES: January 1, 1999, through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: David Gouveia, Fishery Management Specialist, 978-281-9280.

SUPPLEMENTARY INFORMATION: Federal regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) allow the Regional Administrator, Northeast Region, NMFS (Regional Administrator), to suspend annually by publication of an announcement in the **Federal Register**, the minimum size limit for Atlantic surf clams (50 CFR 648.72(c)). This action may be taken unless discard, catch, and survey data indicate that 30 percent of the Atlantic surf clam resource is smaller than 4.75 inches (12.065 cm) and the overall reduced size is not attributable to beds where growth of the individual clams has been reduced because of density-dependent factors.

At its August meeting, the Mid-Atlantic Fishery Management Council (Council) accepted the recommendations of its Surf Clam/Ocean Quahog Committee and voted to recommend that the Regional Administrator suspend the minimum size limit for surf clams in 1999. Commercial surf clam shell length data for 1998 indicate that only 11.3 percent of the samples were composed of surf clams that were less than 4.75 inches (12.07 cm). Based on these data, the Regional Administrator adopts the Council's recommendation and publishes this announcement to suspend the minimum size limit for Atlantic surf clams for the period January 1, 1999, through December 31, 1999.

This action is authorized by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: December 29, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 98-34834 Filed 12-30-98; 3:06 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222313-8320-02; I.D. 122898C]

Fisheries of the Exclusive Economic Zone Off Alaska; Closures of Specified Groundfish Fisheries in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is closing specified groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the prohibited species bycatch allowances and directed fishing allowances specified for the 1999 interim total allowable catch (TAC) amounts.

DATES: Effective 0001 hrs, Alaska local time (A.l.t.), January 1, 1999, until superseded by the notice of Final 1999 Harvest Specification for Groundfish, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(d), if the Administrator, Alaska Region, NMFS (Regional Administrator) determines that the amount of a target species or "other species" category apportioned to a fishery will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (§ 679.20(d)(1)(iii)). Similarly, under § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, or *C. bairdi* Tanner crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

NMFS will publish interim 1999 harvest specifications for these groundfish fisheries in the January 4, 1999, publication of the **Federal Register**. The Regional Administrator has determined that the interim TAC amounts of the following species will be reached and will be necessary as incidental catch to support other anticipated groundfish fisheries prior to the time that final specifications for groundfish are likely to be in effect for the 1999 fishing year. Consequently, in accordance with § 679.20(d)(i), the Regional Administrator establishes these interim TAC amounts as directed fishing allowances.

Pollock: Bogoslof District
Pacific ocean perch: Bering Sea subarea
"Other rockfish": Bering Sea subarea
"Other red rockfish": Bering Sea subarea
Sharpchin/northern rockfish: Aleutian Islands subarea
Shorthead/rougheye rockfish: Aleutian Islands subarea
"Other rockfish": Aleutian Islands subarea