

in accordance with the applicable Maintenance Manual, a special flight permit for one flight below 100 knots indicated airspeed may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on December 11, 2001.

**David A. Downey,**

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01-31042 Filed 12-14-01; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF JUSTICE

### Office of the Attorney General

#### 28 CFR Part 97

[OAG 100P; AG Order No. 2539-2001]

RIN 1105-AA77

#### Establishment of Minimum Safety and Security Standards for Private Companies That Transport Violent Prisoners

**AGENCY:** Office of the Attorney General, Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In the Interstate Transportation of Dangerous Criminals Act of 2000 ("the Act"), Congress instructed the Department of Justice ("the Department") to promulgate regulations providing minimum safety and security standards for private companies that transport violent prisoners on behalf of State and local jurisdictions. The Act provides that the regulations shall not impose stricter standards with respect to private prisoner transport companies than are applicable to certain Department agencies that transport violent prisoners under comparable circumstances. This rule proposes minimum standards in only those areas that Congress identified in the Act.

**DATES:** *Comment date:* Comments must be submitted on or before February 15, 2002.

**ADDRESSES:** Please submit written comments to Lizette Benedi, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530. Comments may also be submitted by fax at (202) 353-9164 and by electronic mail at Jeannas.Act.comments@usdoj.gov. To ensure proper handling, please reference "Jeanna's Act" on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** For matters relating to this proposed rule, please contact Lizette Benedi, (202) 514-3824.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

###### *What Does This Rule Propose?*

This rule proposes a limited number of minimum safety and security standards for private companies that engage in the business of transporting violent prisoners on behalf of State and local jurisdictions. The proposed rule requires private prisoner transport companies to establish measures designed to improve public safety by preventing escapes of violent prisoners and establishing appropriate safeguards and procedures in the event of the escape of a violent prisoner.

In addition, the rule proposes minimum standards to ensure the safety of violent prisoners during transportation.

###### *Why Is This Rule Needed?*

In enacting the Interstate Transportation of Dangerous Criminals Act of 2000, Public Law 106-560 (114 Stat. 2784)(enacted December 21, 2000), Congress found that State and local jurisdictions are increasingly turning to private companies to transport their violent prisoners, and that escapes have occurred. Congress determined that minimum regulations for the private prisoner transport industry were necessary to provide protection against risks to the public that are inherent in the transportation of violent prisoners and to assure the safety of those being transported.

###### *Does Compliance With These Regulations Mean That Private Prisoner Transport Companies Have Met All of Their Legal Obligations?*

No. These regulations implement the Act and do not pre-empt any applicable Federal, State, or local law that may impose additional obligations on private prisoner transport companies or otherwise regulate the transportation of violent prisoners. For example, all Federal laws and regulations governing interstate commerce (e.g., Federal laws regulating the possession of weapons and Federal Aviation Administration rules and regulations governing travel on commercial aircraft) will continue to apply to private prisoner transport companies.

Because these regulations implement the Act, they affect only limited aspects of a private prisoner transport company's operations. Therefore, these regulations are not intended to be model

guidelines or a complete set of standards for the private prisoner transport industry. Private prisoner transport companies should be aware that compliance with these regulations will mean only that they will not be subject to the sanctions established in the Act. The regulations are not meant to prevent or discourage private prisoner transport companies from adopting additional or more stringent standards relating to the transportation of prisoners. Similarly, these regulations do not limit the authority of Federal, State, or local governments to impose additional safety requirements or impose a higher standard of care upon private companies that transport violent prisoners.

The purpose of these regulations is to enhance public security and the safety of both prisoners and guards during transportation. The regulations are not intended to create a defense to any civil action, whether initiated by a unit of government or any other party. Thus, for example, compliance with these regulations is not intended to and does not establish a defense against an allegation of negligence or breach of contract. Regardless of whether a contractual agreement establishes minimum precautions, the companies affected by these regulations will remain subject to the standard of care that is imposed by statute and common law upon their activities (or other activities of a similarly hazardous nature).

###### *Overview of the Standards That This Rule Proposes*

This proposed rule would (1) require that private prisoner transport companies comply with minimum standards for fingerprint-based criminal background checks and preemployment drug testing for potential employees; (2) provide minimum standards for the length and type of employee training; and (3) establish restrictions on the number of hours that transportation employees can be on duty during a given time period.

This rule also proposes that private prisoner transport companies comply with minimum standards for the use of restraints while transporting violent prisoners, and it establishes categories of violent offenders required to wear identifying clothing. Further, the rule proposes a minimum guard-to-prisoner ratio that must be observed while transporting violent prisoners, and proposes that private prisoner transport companies comply with standards regarding employee uniforms and employee identification.

In addition, the rule proposes to require private prisoner transport

companies to notify local law enforcement officials 24 hours in advance of any scheduled stops in their jurisdiction when transporting violent prisoners. In the event of the escape of a violent offender, the proposed rule requires that the private prisoner transport company personnel immediately notify appropriate law enforcement officials in the jurisdiction where the escape occurs, as well as the governmental entity that contracted with the private prisoner transport company for the transport of the escaped violent prisoner.

Finally, the rule proposes that private prisoner transport companies adopt certain minimum standards to protect the safety of violent prisoners in accordance with applicable Federal and State law.

Pursuant to section 4(c) of the Act, except for the standards regarding the categories of violent prisoners required to wear brightly colored clothing, these proposed standards are not stricter than the standards applicable to the United States Marshals Service (USMS), Immigration and Naturalization Service (INS), and the Federal Bureau of Prisons (BOP) when transporting violent prisoners under comparable circumstances.

#### *Who Is Covered by This Proposed Rule?*

The proposed rule only covers "private prisoner transport companies," which are defined in Section 3 of the Act as "any entity, other than the United States, a State, or an inferior political subdivision of a State, which engages in the business of the transporting for compensation, individuals committed to the custody of any State or of an inferior political subdivision of a State, or any attempt thereof."

Section 3 of the Act defines a "violent prisoner" as "any individual in the custody of a State or an inferior political subdivision of a State who has previously been convicted of or is currently charged with a crime of violence or any similar statute of a State or the inferior political subdivisions of a State, or any attempt thereof."

The term "crime of violence" has the same meaning as in section 924(c)(3) of title 18, United States Code. Pursuant to this subsection, a crime of violence is an offense that is a felony and (a) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

#### *Does This Rule Affect Companies That Only Transport Violent Prisoners Within the Boundaries of One State, Only Those Companies That Transport Prisoners Across State Lines, or All Private Prisoner Transport Companies?*

If a company meets the definition of "private prisoner transport company" as defined in section 3(2) of the Act, the company must comply with this rule even if it does not transport prisoners across state lines. Congress passed the Act in order to impose regulations upon a previously federally unregulated industry that operates across the United States and engages in a potentially dangerous activity. In section 2 of the Act, Congress found that, "when a government entity opts to use a private prisoner transport company to move violent prisoners, then the company should be subject to regulation in order to enhance public safety." This finding by Congress indicates that the threat that it intended to remedy was that posed by an unregulated industry engaging in business that could potentially affect the safety of citizens in all states.

Although the Act is officially titled the "Interstate Transportation of Dangerous Criminals Act of 2000," it is the Department's view that limiting the Act's provisions to only those companies that cross state borders would create the unacceptable result of leaving unregulated certain members of the industry that Congress clearly intended to regulate. In addition, the definition that Congress provided for "private prisoner transport company" does not require that the company engage in the interstate transportation of violent prisoners in order to be covered by the Act's provisions.

The statutory direction of Congress to the Department was clear on this point. Section 4(a) of the Act states that the Department "shall promulgate regulations relating to the transportation of violent prisoners in or affecting interstate commerce." A company that only operates intrastate can affect interstate commerce in several ways (e.g., by using interstate highways, by utilizing communications systems that rely on interstate modes of communications or satellites, by transporting prisoners who generally seek to cross state lines during escapes, by relying on the law enforcement agencies of nearby states in the event of an escape, etc.). Therefore, it is the Department's view that Congress clearly contemplated that, viewed either singly or in the aggregate, private companies that engage in the commercial activity of transporting violent prisoners within a

state sufficiently affect interstate commerce to be covered by the requirements of this proposed rule.

#### *What Are the Penalties For Noncompliance With the Regulations?*

Section 5 of the Act states that violators shall be fined up to \$10,000 per violation and the costs of prosecution. Violators also will be responsible for making restitution to any public entity that expends funds for the purpose of apprehending any violent prisoner who escaped, in whole or in part, because of a violation of the Act. As discussed above, conduct constituting a violation of these regulations may also result in unrelated penalties as a result of criminal, administrative, or civil process pursuant to local, State, or other Federal laws.

#### *Additional Considerations*

There is considerable variation in the classification of prisoners that the Department transports and the circumstances under which those prisoners are transported. For example, unlike private prisoner transport companies, INS at times transports entire family groups (of both sexes and of different ages) who have been apprehended after illegally entering the United States. Under other circumstances, INS (along with BOP and USMS) transports offenders who have committed very violent crimes and are considered to be a high security risk. Accordingly, the Department's components that transport prisoners have developed differing standards for prisoner transport that are appropriately tailored to their roles and missions.

By requiring the Department to promulgate regulations in this area, Congress appears to have at least two goals in mind. First, uniform standards for transporting prisoners serve to improve public security and the safety of the prisoners and guards during transportation. Second, by providing that the Department's regulations for the private sector not be stricter than those governing the Department's own components, Congress appears to have been concerned that the regulations not be unduly burdensome.

The Department shares Congress' concerns that any regulations that the Department issues should not unduly burden private industry, especially small entities, while still addressing the problems that motivated the passage of this Act. However, regulations that fully reflect the considerable variation of the Department's own prisoner transport activities might be so complex as to be burdensome on the affected entities and,

nonetheless, still not fully comply with congressional intent in certain areas.

Therefore, consistent with section 4(c) of the Act, for some of the specific requirements of the Act (e.g., that prisoners ordinarily be required to wear brightly colored clothing) the rule proposes standards somewhat more stringent than the Department uses itself for the transport of prisoners, under certain circumstances. Moreover, for certain requirements that Congress imposed on private entities, the Department may have greater flexibility in its comparable internal procedures because the functions of Departmental agencies differ significantly from those of private prisoner transport companies, and therefore the circumstances are not comparable.

For other requirements of the Act (e.g., the guard-to-prisoner ratio), the Department is proposing for comment a one-guard-to-six-violent-prisoner ratio for promulgation in the final rule. The Department specifically invites comments from private prisoner transport companies, from State and local law enforcement entities, and from the general public concerning what ratio the Department should adopt in the final rule.

The Department also seeks comment on the potential impacts that these regulations may have on the ability of sheriffs' departments and other operators of local jails to arrange safe and efficient violent prisoner transport in response to writs or other requirements.

#### *How Does the Rule Affect the Transportation of Juveniles?*

It is the Department's view that the provisions of the Act do not apply to the transportation of juveniles unless the juvenile has been charged or convicted as an adult for a crime of violence as defined in 18 U.S.C. § 924(c)(3).

The Act defines a violent prisoner as one "who has previously been convicted of or is currently charged with a crime of violence." The Act gives the term "crime of violence" the same meaning as that term has in 18 U.S.C. § 924(c)(3). Section 924(c)(3) includes in its definition of "crime of violence" the requirement that it be "an offense that is a felony." This should be understood as referring to adults convicted of or facing felony criminal charges and to juveniles who previously have been convicted of or who are being prosecuted as adults for violent felony offenses. Unless juvenile offenders have been or are being tried as adults under federal law, they generally are not considered to have been "convicted" or "charged" with a "crime of violence" as

defined in 18 U.S.C. 924(c)(3). Instead, they are considered to have been adjudicated delinquent or found guilty (or found "involved") in a juvenile delinquency proceeding, rather than convicted of a crime. E.g., *United States v. Frasquillo-Zomosa*, 626 F.2d 99, 101 (9th Cir. 1980) ("A successful prosecution under the [Federal Juvenile Delinquency] Act results not in a conviction of a crime but rather in adjudication of a status"). Although some provisions under federal law create an exception to this general understanding by explicitly providing that a "conviction" includes certain juvenile adjudications, e.g., 18 U.S.C. § 924(e)(2)(B) ("violent felony" includes "any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for [a term exceeding one year] if committed by an adult"), neither 18 U.S.C. 924(c)(3) nor the Act itself contain any language that would support interpreting the Act as including within its scope the transportation of juvenile offenders who have been adjudicated or who are to be tried as juveniles.

#### *Who Was Consulted During the Development of This Proposed Rule?*

In accordance with the Act, Department of Justice officials met with several representatives of the private prisoner transport industry, the American Correctional Association (ACA), and law enforcement groups, including the National Sheriffs' Association, American Jail Association, National Association of Police Organizations, and the National Association of Government Employees International Brotherhood of Police Officers. During this rulemaking process, the Department looks forward to hearing additional comments from law enforcement groups, the public, and the private prisoner transport industry.

### **B. Detailed Discussion of the Proposed Requirements Covering Private Prisoner Transport**

#### *1. Background Checks and Drug Testing Standards for Potential Employees*

Under the proposed rule, potential employees of private prisoner transport companies will have to pass a preliminary fingerprint-based criminal background check prior to being hired. This background check will disqualify from employment those applicants convicted of a misdemeanor crime of domestic violence or any felony conviction. The fingerprint-based criminal background check would be

performed by providing the applicant's fingerprints to the governmental agency that is contracting with the private prisoner transport company, for submission through the state history record repository to the FBI. The background check also must include a credit report check, a physical examination, and a personal interview.

Also, potential employees of private prisoner transport companies must undergo testing to detect the prior or current use of controlled substances as a condition of employment. The pre-employment drug testing must be done in accordance with applicable State law. In the event that there is no applicable State law, private prisoner transport companies must comply with the pre-employment drug testing requirements that apply to commercial drivers (*See*, 49 CFR 382.301).

#### *2. Length and Type of Employee Training*

The Act states that the Department may require that employees of private prisoner transport companies participate in up to 100 hours of preservice training relating to the transportation of prisoners. This training must be in the following areas: use of restraints, searches, use of force (including use of appropriate weapons and firearms), CPR, map reading, and defensive driving. This rule proposes to require private prisoner transport companies to provide their employees with 100 hours of preservice training in those areas.

The training of Department personnel who transport violent prisoners is notably more rigorous in length and in type than the 100-hour maximum that Congress established in the Act for private prisoner transport companies. For instance, the BOP requires any employee who assists with prisoner bus transport to have successfully completed, at a minimum, one "probationary" year of service and attended 80 hours of Institutional Familiarization, 120 hours of Introduction to Correctional Techniques, 24 hours of Basic Prisoner Transport, and 80 hours of Bus Operations Training. In addition, a BOP employee must undergo 40 hours of refresher training annually and must possess a commercial drivers license.

Similarly, INS employees who transport prisoners must undergo a minimum of 196 hours of training, including 20 hours of driving-related training, 16 hours of first-aid training and CPR, 6 hours of training on conducting searches, 48 hours of training on the use of firearms, and 88

hours of training on the proper use of force.

The USMS also requires that its employees who transport prisoners undergo rigorous training, including follow-up courses. As part of its required training regimen, the USMS requires over 100 hours of training in the areas of prisoner handling, prisoner searches, proper application and removal of restraints, tactical training in dealing with combative subjects, the proper escalation and de-escalation of force, vehicle operation, and firearms safety.

The proposed rule does not address the minimum quality standards required for training programs, the need for in-service training, or instructor qualifications, although these are critical factors that enable Department agencies to transport prisoners safely. In its consultations with ACA and private prisoner transport companies, the Department has learned that there is currently no accredited training program to serve the function of training the employees of private prisoner transport companies. The ACA has reported that it has begun to develop standards for such training. The Department seeks comment from the private prisoner transport industry, the public, and law enforcement officials on the manner in which this training should be conducted and its quality assured.

### *3. Number of Hours an Employee May Be on Duty During a Given Time Period*

This proposed rule sets requirements to ensure that drivers of private prisoner transport companies comply with Federal standards that limit the amount of time a commercial driver may be on duty during a given time period. Pursuant to 49 CFR 395.3, no driver of a commercial vehicle may drive more than 10 hours following 8 consecutive hours off duty. A commercial driver will be barred from driving if the driver has been on duty (regardless of whether the employee drove) for 15 hours following 8 consecutive hours off duty.

If the motor vehicle carrier operates commercial vehicles every day of the week, a driver will be barred from driving if the driver has been on duty for 70 hours in any period of 8 consecutive days. If the motor vehicle carrier does not operate commercial vehicles every day of the week, a driver will be barred from driving if the driver has been on duty for 60 hours in any period of 7 consecutive days.

### *4. The Number of Personnel That Must Supervise Violent Prisoners*

The Act directs the Department to develop minimum standards for the number of private prisoner transport personnel that must supervise violent prisoners. The Act states that these minimum standards shall not exceed a requirement of one agent for every six violent prisoners. In addition, the Act states that the Department must not impose stricter standards on private prisoner transport companies than are applicable, without exception, to the USMS, BOP, and INS. As a minimum standard, the Department believes that a one-agent-to-six-violent-prisoner ratio is the most appropriate standard to protect the public from the threat of violent prisoner escapes.

Although the Act states that the Department should establish a minimum guard-to-prisoner ratio, the Act also permits the Department to give private prisoner transport companies "appropriate discretion" in this area. The Department seeks comment from law enforcement entities, private prisoner transport industry members, and the public as to the proper level of discretion that private prisoner transport companies should have in relation to the one-guard-to-six-violent-prisoner ratio proposed by this regulation.

#### *Department Practices and Procedures*

When Justice Department components transport high-risk, maximum custody, or violent offenders, the guard-to-prisoner ratios are often significantly more strict than one guard for every six prisoners. For instance, when BOP personnel transport their maximum custody inmates on escorted trips (for medical treatment or other purposes), the BOP policy guidelines require that for each such inmate, there must be three BOP staff escorts, one of whom must be a Lieutenant. The guidelines also require that additional BOP staff ride along for the duration of the trip in a follow vehicle. Because BOP policy guidelines recommend that two BOP staff ride in the follow vehicle, the guard-to-prisoner ratio in this case is five guards to one prisoner. BOP policy guidelines require that this guard-to-prisoner ratio be maintained regardless of the number of prisoners being transported. When BOP transports prisoners who do not pose the highest security risk (regardless of the purpose of the trip), the BOP still requires that two employees ride in the van or car in which the prisoners are being transported, but without a requirement for a follow vehicle.

Similarly, when USMS transports prisoners in a sedan (with a maximum capacity of three prisoners), USMS guidelines require a minimum of two armed deputies, for a minimum ratio of two guards to three prisoners. If only two prisoners are being transported by the USMS in a sedan, the two-deputy requirement still applies, yielding a ratio of one guard to one prisoner. If, for any reason, a sedan or van with a safety screen is not available, USMS guidelines require a minimum of a one-guard-to-one-prisoner ratio. Similar to the BOP policy, when the USMS transports prisoners in a van, USMS guidelines require that a minimum of two armed deputies accompany the prisoner. The resulting ratio will be at least two armed USMS deputies for 12 prisoners, yielding a ratio of one guard for six prisoners.

INS guidelines require that if an INS detainee is being transported in an unsecured sedan, van, or utility vehicle by one INS officer, there is a minimum guard-to-detainee ratio of one guard for every two INS detainees. If there are more than two INS detainees being transported, there must be another INS guard present. The maximum capacity of an unsecured INS van is six detainees, resulting in a minimum possible guard-to-detainee ratio of one guard to three detainees for travel in an unsecured INS van. For secured sedans, vans, and utility vehicles, there is a minimum requirement of one officer unless the trip is over a long distance or requires stops for food or fuel. In that case, another officer would normally be required.

There are instances where Department personnel must transport prisoners in buses, and in these cases, the guard-to-prisoner ratio typically diminishes. At times, this ratio may decrease to less than one guard for every six prisoners. The BOP guidelines require that three BOP staff accompany bus movements (not including the transportation of high risk offenders described above). Similarly, USMS policy mandates that a minimum of two armed deputies and a driver be used during bus transportation. Regulations of the INS require a minimum of two INS agents on each bus; however, the regulations also state that the minimum number of agents should be increased, or an escort vehicle added, if INS agents determine that the risk level of detainees warrants it.

Despite any decrease in the guard-to-prisoner ratio, there are numerous Department operating procedures that are not required of private prisoner transport companies that ensure the security of the Department vehicles,

officers, and prisoners. For instance, there are Department operating procedures that require buses and other vehicles to have the rear cage door locked while inmates are aboard, to be equipped with security screens that separate the driver from the prisoners, to have steel mesh over the windows and doors, to have inside door handles removed, and to be searched for contraband before and after each prisoner movement. There are extensive Department guidelines that govern the movement of prisoners to and from buses, and also govern prisoner seating arrangements once on the bus. There are additional policies and procedures for monitoring and controlling prisoner conduct while on the bus and during stops. In addition, Department personnel have extensive training and knowledge of proven safety techniques (e.g., rules that handcuff keys are to be carried on separate key rings from vehicle ignition keys). This proposed rule will not require that any of these measures be adopted by private prisoner transport companies.

#### Simplified Guard-To-Prisoner Ratio for Industry

As discussed in the preceding paragraphs, the Department's guard-to-prisoner ratio varies depending upon the nature and security classification of the offender, the escape risk, and other factors. This ratio is often significantly more strict than the maximum ratio the Act permits the Department to require for private companies. The Department's ratio is also sometimes less strict than the one-to-six ratio referred to in the Act. The Department's own excellent record in transporting prisoners safely and securely with ratios lower than one guard to six prisoners is due in large measure to the extensive training that custodial and transport personnel receive (training that greatly exceeds the maximum training that the Department is permitted to require by regulation), to the carefully designed physical configuration of the transport vehicles, and to the elaborate procedures set forth in the Department's guidelines.

It should be noted that this proposed rule does not require that private transport companies adhere to all of the Department's own guidelines regarding prisoner transport. Compliance with such guidelines would likely be very expensive for private companies. Further, a multi-tiered approach that the Department follows for conducting its own transport of prisoners would be administratively burdensome for private companies and require them to obtain information about each prisoner (such

as their escape risk or security classification) which they are not at present likely to receive from the committing authority. But in the absence of mandated compliance with all of these safeguards, private prisoner transport does not involve "comparable circumstances" that would permit use of ratios more lenient than one to six.

In an effort to comply both with the statutory requirement that the guard-to-prisoner ratio not exceed one to six and the statutory requirement that the Department not impose on private companies stricter requirements than it adheres to without exception, the Department proposes to require that private companies transporting offenders not exceed a ratio of one agent to six violent prisoners.

The Department believes that this ratio provides a security level consistent with congressional intent but without imposing an elaborate set of multi-tiered ratios, compliance with which would be complex for private entities lacking the Department's resources. The Department further believes that the circumstances under which it transports prisoners with a ratio less stringent than one to six are fully justified by the additional security precautions that the Department takes that will not be imposed upon private companies.

The Department recognizes that the private prisoner transport industry may experience significant variations in the carrying capacity of vehicles used, the number of prisoners transported per trip, and the security levels of the prisoners being transported. The variation among these factors may complicate the construction of a workable guard-to-violent-offender ratio; therefore, the Department seeks input from industry, law enforcement, and the public as to the factors that should guide the development of a minimum guard-to-violent-prisoner ratio.

#### 5. Employee Uniforms and Identification

The rule proposes to require that private prisoner transport companies comply with certain minimum requirements for employee uniforms and identification. These standards will require the wearing of a uniform with a badge or insignia that identifies to the prisoners and others that the employee is a transportation officer.

While engaged in the transportation of violent prisoners, private prisoner transport company employees must wear a uniform that clearly identifies them as such. The uniforms should be readily distinguishable in color and style from uniforms worn by

Department of Justice personnel who transport violent prisoners.

The rule also proposes that private prisoner transport companies require their employees to have identification credentials on their uniform that are visible at all times while engaged in the transportation of violent prisoners. The identification credentials must have a photograph of the employee that is at least one inch square, and a printed personal description of the employee, including the employee's name, the signature of the employee, and date of issuance. This standard is in accordance with Department regulations that require Department employees to carry proper identification (and a badge under certain circumstances).

While Department regulations require its employees to possess proper identification at all times, under the proposed rule private prisoner transport company employees will only be required to possess and display proper identification while transporting violent prisoners.

#### 6. Uniforms for Violent Prisoners

The Act directs the Department to create standards establishing categories of violent prisoners required to wear brightly colored clothing clearly identifying them as prisoners. Congress has observed that a number of violent prisoners have escaped from private prisoner transport companies while wearing civilian clothing. An escaped violent prisoner wearing civilian clothing presents a much more serious risk to the public than an escaped prisoner who is clearly identified as a prisoner. The absence of any requirement for transported prisoners to wear distinctive and brightly colored clothing has unnecessarily hindered law enforcement officers in their search for escaped prisoners.

After consulting with representatives of the law enforcement community, the private prisoner transport industry, and the ACA, the Department has determined that the category of prisoners required to wear distinctive prisoner uniforms should consist of all violent prisoners covered by the Act. Therefore, this rule proposes to require all violent prisoners transported by private prisoner transport companies to wear distinctive clothing that clearly identifies them as prisoners. As currently defined, this category is sufficiently broad to encompass those prisoners who may constitute a threat to public safety without requiring private companies to conduct intensive individualized risk assessments for each prisoner transported. This rule will not prohibit or in any way impede the

ability of private prisoner transport companies to require the wearing of uniforms by some or all other prisoners. The Department welcomes comments from interested parties as to whether it would be beneficial to broaden or narrow the category of prisoners required to wear such clothing.

The Department recognizes that there are circumstances when it may be inappropriate or impractical to transport violent prisoners in distinctive brightly colored clothing (e.g., traveling on commercial aircraft, to a court appearance, or in the case of a particular physical disability). In keeping with the intent of the Act, any exceptions to the prisoner clothing requirement will be narrow. The Department seeks comment from the public, law enforcement, and industry as to what types of security or other specific considerations may warrant exceptions to the prisoner clothing requirement. Nothing in this proposed rule or in the final rule will supersede any applicable Federal Aviation Administration rules or regulations concerning the transportation of prisoners on commercial aircraft.

The Department also learned from its consultations with the industry that it might be advisable for the Department to establish a standardized, brightly colored, and distinctive prisoner uniform that all private prisoner transport companies would be required to use. Industry representatives indicated that a standardized style, color, or pattern of prisoner uniform could have practical advantages, such as being easier and less expensive for the companies to purchase in bulk and making a more definite impression in the mind of the public to help them easily identify a prisoner in transit. The Department seeks comment from all interested parties as to whether a standardized prisoner uniform would be a useful or valuable element of prisoner transportation by private companies.

From those entities who believe that the concept of a standardized prisoner uniform should be pursued, the Department welcomes recommendations as to the color (bright yellow, black and white striped, etc.) as well as style (jump-suits, two-piece uniforms that accommodate restraints, etc.) of prisoner uniform that should be adopted. Any recommendations for a particular color or style of standardized prisoner uniform should consider that the prisoner uniform must be distinctive without being confusingly similar to uniforms in use by other public or private entities. Such recommendations should also be distinctive from brightly colored clothing worn by law-abiding

citizens, such as the "blaze orange" worn by hunters and road crews or the bright yellow clothing worn by certain firefighters.

The Department requests comments on whether private prisoner transport companies that currently require violent prisoners to wear distinctive uniforms should be required to purchase new uniforms to comply with a new standard (if a new standard is established). As an alternative to the Department requiring the immediate replacement of currently-used brightly colored prisoner uniforms with some standard uniform, the Department requests comments on whether it should permit those companies that currently use prisoner uniforms to continue to use their current inventory until the uniforms are replaced in the ordinary course of business before being required to comply with any new standard. Under this alternative, the regulations would only require that any new uniforms that are purchased (or new contracts for the purchase of uniforms entered into) after the effective date must conform to the standard uniform described in the regulations.

This part of the proposed rule would require that private prisoner transport companies take precautions that are similar to those taken by Department agencies must ensure that violent prisoners wear brightly colored clothing that identifies them as prisoners when they are being transported. Absent extenuating circumstances, the BOP requires that all inmates who travel on BOP buses be transported in government-issued clothing, including shoes. The INS requires violent prisoners to wear orange or red uniforms and less dangerous offenders to wear blue or yellow uniforms.

#### *7. Restraints To Be Used While Transporting Prisoners*

The Department agencies that transport violent prisoners have similar policies governing the type of restraints that must be used on violent prisoners, during transportation. Violent prisoners, and those defined by the BOP to be "Maximum Custody" prisoners, are to be transported in handcuffs, leg irons, and waist chains. This rule proposes to apply this standard to private prisoner transport companies. Violent prisoners are to be transported in handcuffs, leg irons, and waist chains unless the use of all three restraints would create a serious health risk to the prisoner, or unless extenuating circumstances make the use of all three restraints impracticable. Examples of such exceptions would include the

pregnancy or physical disability of a violent prisoner.

The Department is considering the implementation of additional minimum requirements for private prisoner transport companies concerning the use of restraints. These additional minimum requirements would be similar to certain guidelines used by Department agencies during transportation of violent prisoners. For example, Department agencies have regulations that dictate when and how a violent prisoner is to be restrained during movement to the bus and during rest stops. Department agencies are also required to maintain an adequate supply of all types of restraint equipment on the bus. Each BOP bus is required to carry a minimum of two sets of modified leg irons to be used as handcuffs for large inmates. In addition, each BOP bus is required to have a 35-foot long chain and padlock in the event that a mass emergency evacuation of the bus is required.

Department agencies also adhere to standards concerning the maintenance of restraints. All restraining equipment is to be inspected daily while the bus is operational. This inspection is necessary to avoid the use of restraining equipment that may have been altered during a previous trip. Comment is requested on the potential inclusion of one or more of these additional requirements as part of the minimum transportation requirements.

#### *8. Notification of Local Law Enforcement Prior to Stops Within Their Jurisdiction*

When a prisoner transport vehicle is stopped, the risk of escape is greatest because prisoners may be boarding or exiting the vehicle and guards may be distracted while getting food, fueling the vehicle, or attending to medical or other emergencies. In the Act, Congress found that the private prisoner transport process can last for weeks as violent prisoners are dropped off and picked up at a network of hubs nationwide. Because each stop involves a potentially high security risk, Congress has imposed a requirement that when transporting violent prisoners, private prisoner transport companies are to notify local law enforcement officials 24 hours prior to a scheduled stop in their jurisdiction.

For the purposes of this proposed rule, a "scheduled stop" is defined as a predetermined stop at a State, local, or private correctional facility for the purpose of loading or unloading prisoners or using such facilities for overnight, meal, or restroom breaks. Scheduled stops do not include routine fuel stops or emergency stops. Notice is

to be given to law enforcement officials prior to these scheduled stops to ensure that the risk of a prisoner escaping is as small as possible.

There is no comparable requirement for Department agencies to provide advanced notice of scheduled stops because the transporting agency is a law enforcement entity. Any emergency or other disturbance may be instantaneously reported to other law enforcement entities through the Emergency Alert System that links all BOP buses with the central office. There is no need for BOP buses to relate their location to local law enforcement because the BOP central office is able to locate the bus via the Global Positioning System that is installed on each BOP bus.

The rule will not propose that the use of specific technological equipment be required of private prisoner transport companies, such as the installation of a satellite tracking system that is linked to law enforcement. However, the rule will propose to require that notice of scheduled stops be given to local law enforcement 24 hours prior to the stop.

#### *9. Immediate Notification of Law Enforcement in the Event of an Escape*

In the event of the escape of a violent prisoner, the private prisoner transport company must immediately notify appropriate law enforcement officials in the jurisdiction where the escape occurred, and also contact the governmental entity that contracted with the transport company. Private prisoner transport companies should be sufficiently equipped to provide immediate notification to law enforcement in the event of a prisoner escape. Law enforcement officials must receive notification no later than 15 minutes after an escape is detected unless the company can demonstrate that extenuating circumstances necessitated a longer delay.

Congress imposed this requirement because there was at least one occasion when a violent prisoner's escape from a private transport company was not reported to law enforcement until hours after the escape was detected. Such a delay placed the public at risk and irreparably harmed the ability of law enforcement to secure the area, establish roadblocks, conduct intensive searches in the vicinity, notify the public about the possibility of danger, and identify relevant witnesses who could have aided in the capture of the prisoner.

All Department agencies that transport violent offenders have guidelines that require providing notice to other law enforcement agencies in the event of a prisoner escape during

transit. The USMS regulations require that prisoner escapes and attempted escapes immediately be reported to the United States Marshals Communications Center and the U.S. Marshal, Chief Deputy U.S. Marshal, or Supervisory Deputy U.S. Marshal. The United States Marshals Communications Center will then notify the Investigative Services Division and the Prisoner Services Division of the USMS. Similarly, in the event of a prisoner escape from a BOP vehicle, the BOP is required to contact the USMS and the nearest BOP institution, which will begin notifications up the chain of command as necessary. State and local law enforcement will also typically be contacted.

Department agencies have adopted a uniform rule in the event of a prisoner escape that the first priority is to secure the remaining prisoners and transport them to their final destination. Under no circumstances will the supervision of the other inmates be relaxed in order to pursue an escaping inmate. The Department is considering proposing that private prisoner transport companies adopt similar procedures.

#### *10. Safety of Violent Prisoners*

Congress has determined that private prisoner transport companies must provide standards of safety for violent prisoners in accordance with applicable Federal and State law. Department agencies have implemented extensive requirements to ensure the safety of violent prisoners who are transported. In addition to the protections provided by existing State and Federal laws, the Department may propose that private prisoner transport companies adopt some of the safety measures that Department agencies have adopted including: requiring safety equipment on buses (including first-aid kits, extra blankets, sirens, and extra restraining devices); abiding by rigid maintenance schedules for vehicles; mandatory inspections of vehicles; requirements for communications systems on vehicles; prohibitions on tobacco use in vehicles; seating arrangements to accommodate troublesome prisoners or those with medical needs; and requirements that prisoners be searched and restrained in a professional, systematic, methodical, and consistent manner.

Similarly, Department agencies engaged in prisoner transport have procedures to conduct searches of vehicles and prisoners as needed to ensure that no contraband or weapons are brought onto the vehicle. To protect the safety of prisoners, Department personnel are rigorously trained in the proper use of firearms and the

appropriate use of force. Also, to protect prisoners, appropriate forms and records must be filed prior to the use of specialized restraints on a prisoner and after a strip search that occurs for reasons other than receipt of a new prisoner (this report documents the identity of the prisoner searched, date, place, time, and duration of the search, reason for the search, names of those present, and a description of any weapons, evidence, or contraband found). The final rule may adopt all or some of the safety measures discussed above that have been implemented by Department agencies.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is designed to have the lowest possible impact on businesses that transport violent prisoners while still protecting the safety of the public. This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804, and it will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **Unfunded Mandates Reform Act of 1995**

By this rule, the Department is proposing to implement the requirements of the Act, which imposes minimum security and safety standards upon private companies transporting violent offenders. The Act's requirements as implemented by these regulations may increase the operating costs of some of these private companies. While State and local governments are the primary entities that contract with private prisoner transport companies, this proposed rule does not impose any direct requirements upon State or local governments or upon their law enforcement offices.

The Act requires potential private company employees to undergo a background check. Federal law does not permit dissemination of criminal history records to private employers for screening unless statutorily authorized. Because current statutory law does not grant private entities the authority to request Federal criminal history records, the private prisoner transport companies must arrange to do so with the contracting State or local

government. Therefore, to effectuate Congress' intent, this proposed rule suggests private prisoner transport companies arrange with the State or local law enforcement agency with which they are contracting to obtain a fingerprint-based background check of their employees or potential employees.

Local law enforcement agencies routinely provide fingerprinting services for various public purposes (e.g. teacher applicants and bar examinations). If a governmental agency wishes to contract its prisoner transport obligations out to a private company, it will need to make arrangements for submitting the applicant's fingerprints to the FBI to conduct a criminal history background check on the applicant. The governmental agency submitting the fingerprints would incur the initial financial responsibility associated with these applications. The cost of the background check is determined by individual State procedure, not Federal procedure, and thus will vary from State to State. The Department has been informed that such application fees range from \$14 to \$95. However, even assuming the highest fee, the Department does not anticipate that this requirement will have a significant financial affect on State or local entities. Because of Federal limitations upon dissemination of background information, the Department does not believe that there are other viable options that would allow private companies to meet the background investigation requirement.

The Department has no evidence to indicate how much of any possible cost increases upon private businesses—from mandatory background checks or any other requirements imposed by this proposed rule—will be passed along as price increases to the State and local jurisdictions contracting with them. However, because of the relatively small number of private prisoner transport companies and the number of people employed by these companies, the Department believes that this proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

#### **Executive Order 12866**

The Department of Justice has reviewed this proposed rule in light of Executive Order 12866, Section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and

Review, and, accordingly, this rule has been reviewed by the Office of Management and Budget.

#### **Executive Order 13132**

The proposed rule only covers the business practices of private companies. This rule will 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### **Executive Order 12988**

This proposed rule meets the applicable standards set forth in Sections 3(a) and 3(b) of Executive Order 12988, Civil Justice Reform.

#### **Paperwork Reduction Act**

This rule imposes no new information collection requirements.

#### **Initial Regulatory Flexibility Act Analysis**

The Department of Justice drafted this rule in a way to minimize its impact on small businesses while meeting its intended objectives. Based upon the preliminary information available to the Department at this time, we are unable to state with certainty that this rule, if promulgated, will not have the effect on small businesses of the type described in 5 U.S.C. 605. Accordingly, the Department has prepared the following initial Regulatory Flexibility Act analysis in accordance with 5 U.S.C. 603.

##### *A. Need for and Objectives of This Proposed Rule*

This proposed rule will implement the Act, which requires the Attorney General to establish regulations imposing minimum safety and security standards on private companies engaged in transporting violent prisoners for State and local jurisdictions.

The Act reflects Congress' concerns about the growing number of State and local jurisdictions that are utilizing the services of private companies as an alternative to sworn law enforcement officers when transporting violent prisoners. Congress found that violent prisoners have escaped from private transport companies and that these escapes have led to further crimes committed by the escaped prisoners as well as significant expenditures by law

enforcement units attempting to capture the escapees. As a result of these findings, Congress determined that it was necessary to regulate the private prisoner transport industry in order to enhance public safety.

Congress required that the Department consult with the ACA and the private prisoner transport industry in promulgating these regulations. On March 30, 2001, Department of Justice officials met in Washington, DC, with representatives of the ACA and the private prisoner transport industry. Several representatives who were not able to attend the meeting in person participated through a conference call. The ACA, and each participating industry representative, agreed that higher standards in this area are much needed. In addition, the consultations provided the Department with information that indicates that the minimum standards imposed by the proposed rules will have little economic impact on these particular companies. Most of the standards proposed in this rule are already followed by the industry leaders and, in many cases, the standards followed by the companies in the private prisoner transport industry are much stricter than those found in this proposed rule.

As is discussed more fully below, the Department has been informed that the private prisoner transport industry includes a large number of small entities. Many of these entities are smaller than those having Washington-based or other staff representatives whom the Department could identify and with whom it could consult in the limited time available under this Act to promulgate regulations.

##### *B. Description and Estimates of the Number of Small Entities Affected by This Proposed Rule*

A "small business" is defined by the Regulatory Flexibility Act (RFA) to be the same as a "small business concern" under the Small Business Act ("SBA"), 15 U.S.C. 32. Under the SBA, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.<sup>1</sup> As the demand for transporting prisoners increases, local and State governments find themselves unable to handle all their transportation needs. Therefore, these governmental entities enter into contracts with private companies to

<sup>1</sup> See 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632).

provide for the transportation of their violent prisoners.

Based upon the information available to the Department at present, there appear to be two distinct groups of businesses in the private prisoner transport industry: Larger companies that contract with various jurisdictions nationwide, and smaller entities often made up of a few individuals who provide transportation for law enforcement departments on an as-needed basis. Both groups of private transport companies would be regulated by this proposed rule and both fall under the definition of a "small business" pursuant to the RFA. The discussion in this section will first focus on the larger companies involved in transporting violent prisoners and then examine issues specific to the smaller companies.

Although the Department consulted with some of the affected entities it was able to identify during the drafting of this proposed rule, the Department realizes that not all interested persons and entities may have been fully represented prior to the publication of this proposal. Therefore, the Department is requesting that further comments be submitted to help ensure that the concerns of all interested parties are considered. Commenters may wish to identify the type of industry, including: The number of companies/individuals involved and the annual income of business they conduct; how the proposed regulatory requirements would impact that industry; and, within the statutory requirements, any suggestions or comments on how the final regulations might be better tailored to the industry without compromising the basic intent of the law which is to enhance public safety by imposing minimum standards on private companies engaged in the transport of violent prisoners.

Commenters should note that the submission of any comments or information on these or other matters addressed by this proposed rule is entirely *voluntary*. The Department is not prescribing the use of any form for this information.

Pursuant to the RFA and public policy concerns, the Department encourages all affected commercial entities and law enforcement agencies to provide *specific* estimates, wherever possible, of the economic costs that this rule will impose on them and the benefits that it will bring to them and to the public. The Department asks affected small businesses to estimate what these regulations will cost as a percentage of their total revenues in order to enable the Department to

ensure that small businesses are not unduly burdened.

### 1. Larger Private Prisoner Transport Companies

In passing the Act, Congress specifically called upon the Attorney General to consult with the ACA and the private prisoner transport industry while drafting this proposed rule. During these consultations, the Department learned that there are approximately 10 to 12 larger private prisoner transport companies currently operating in the United States. However, there is no public or private entity that monitors when a private prisoner transport business enters or exits the industry. Therefore, it is difficult to accurately estimate the number of industry participants.

The Department has drafted this proposed rule to have the minimum possible impact on these businesses while still complying with the intent of the Act. During the Department's consultations, it was informed that many of the proposed minimum standards contained in this proposed rule are already followed by the larger companies. In some instances, the larger industry participants have actually adopted more stringent internal standards than those that would be imposed by the proposed rule. Where the proposed rule would require companies to implement a practice not currently followed, industry opinion was taken into consideration so as to impose no greater burden than necessary.

### 2. Smaller Entities Engaged in the Transport of Violent Prisoners

In addition to the larger private companies that transport prisoners, the Department believes that there is a large number of smaller entities that contract with State and local authorities to transport prisoners. Although the Department does not have an exact number of smaller companies, the ACA and industry leaders estimated that 500 such entities may exist. The Department was informed that these entities are often composed of merely one or two people who enter into contracts with sheriffs' offices on an as-needed basis. It is therefore difficult to address the impact that the proposed regulation would have on the smaller participants in the industry without knowing approximately how many of these smaller entities transport violent prisoners (and therefore would be regulated) or what their current safety and security practices are.

However, the Department is concerned that these smaller companies

will experience the greatest impact as a result of these regulations. For example, a minimum standard that imposes a ratio of at least one guard for every six violent prisoners might be a greater burden to a smaller entity that lacks the personnel resources of a larger company. Similarly, the need to possess a sufficient amount of specialized equipment, as required by these regulations, could create a greater economic burden on smaller entities. Because the Department has not been able to identify such entities, we are specifically requesting comment on the impact that this proposed rule would have on them.

### 3. Impact of These Regulations on Small Governmental Entities

In section 3(2) of the Act, Congress specifically exempted from the minimum standards any Federal, State, or local governmental entity engaged in the transport of violent prisoners. The proposed rule would not regulate these entities. However, the Department is cognizant of the possibility that these regulations may place a burden on small governmental entities that contract with private prisoner transport companies. The Department therefore has consulted with the National Sheriffs' Association and the American Jail Association, as well as representatives from local police departments, to gain a better understanding of the impact this proposed rule will have on their operations.

#### C. Specific Requirements Imposed That Would Impact Private Companies

##### 1. Standards Requiring the Use of Specialized Equipment

Some of the minimum standards proposed by this rule might require private companies to purchase various pieces of equipment, thereby causing an increase in expenditures. The standards regarding mandatory restraints, uniforms for agents, identification credentials for agents, and uniforms for violent prisoners fall into this category. By imposing these standards, companies that are not already in possession of these items, or not in possession of a sufficient quantity, would have to purchase them in order to satisfy the requirements of the regulations.

However, after consulting with representatives from the industry, the Department believes that the proposed rule will not have a significant economic impact on the larger entities in the private prisoner transport industry. With the exception of prisoner uniforms, all companies consulted indicated that they currently require the

use of all equipment specified in this proposed rule. The companies currently use hand-cuffs, leg chains, and waist chains, and all agents are issued uniforms and possess credentials. Therefore, this rule will not propose any new standards that require extra expenditures. Indeed, the private companies consulted by the Department indicated that, in many instances, they require more equipment than the rule proposes. For example, many of the companies require "black boxes" on their restraints in order to prevent a prisoner from picking the lock. In addition, many of the companies require their agents to have cell phones or Global Positioning Systems in their transport vehicles, features that go well beyond the standards contained in this proposed rule.

The larger companies in the industry do not currently require prisoner uniforms for all violent prisoners. This rule proposes to implement a mandatory provision of the Act that requires violent prisoners to be transported in brightly colored clothing that clearly identifies the wearer as a violent prisoner. Because there is no current policy on prisoner attire, this standard would require companies to invest in a sufficient number of prisoner uniforms.

As is discussed elsewhere in this proposed rule, the Department believes that a standardized uniform for violent prisoners might benefit all interested parties, but most importantly, the public. If one were established, a standardized uniform would be able to be produced in larger quantities by clothing manufacturers at a lower cost to the private transport industry. Further, once the color/pattern of uniform for violent prisoners in private transit became widely known, it would become easier both for law enforcement and the general public to identify such prisoners in the event of an escape. Finally, by proposing a single standardized color/pattern for violent prisoners, the Department would hope to avoid any confusion with brightly colored articles of clothing worn by law abiding members of the community engaged in particular activities (e.g., the blaze orange clothing worn by many hunters).

## 2. Training

This rule proposes to require private companies to train their employees in six enumerated areas for a minimum of 100 total hours of training before the employee may transport violent prisoners. This standard might require private companies to incur the cost of training where their current practices fail to meet the standard. Companies

would need to engage qualified instructors with the ability to properly train personnel. However, all of the companies consulted by the Department currently have training procedures in place, many of which are more extensive than those required by the proposed rule. Most of the companies indicated that they require firearms training equivalent to the training received by law enforcement officers. In addition, all of the companies consulted require their personnel to undergo follow-up training during the course of employment. It is therefore unlikely that the new training standards will have a significant impact on the larger industry participants.

## 3. Personnel

The rule proposes to require a minimum ratio of one guard for every six violent prisoners during transport. It is possible that this standard would require companies to increase their personnel in order to meet the mandated ratio. However, all the companies consulted indicated that they already impose minimum guard-to-prisoner ratios, all of which are more stringent than the one proposed in this rule.

## 4. Other Standards Imposed on Companies

Many of the minimum standards in this proposed rule will place affirmative duties on private prisoner transport companies. The standards dealing with pre-employment background checks and drug testing, notification of local law enforcement 24 hours before scheduled stops, and immediate notification of law enforcement should an escape occur all fall into this category. Of these, only the first standard regarding conducting background checks and drug testing carries with it the possibility of increased expenditures. While the notification requirements in this proposed rule do place an affirmative duty on the companies, they do not impose any economic burden on the companies.

## 5. Impact on Smaller Entities

The Department does not have any specific information about how much of an economic impact this rule might have on the smaller industry participants in the foregoing areas: specialized equipment, training, personnel, background checking, and drug testing. However, it is reasonable to assume some aspects of this rule may have a proportionately larger economic impact upon small entities. For example, this may be the case with respect to equipment purchases where,

typically, the larger the quantity purchased, the lower the per unit cost becomes. Given the inexpensive nature of handcuffs, leg irons, and waist chains, however, the additional cost burden should not be significant, especially because private prisoner transport companies are likely already to possess this equipment.

With respect to the training requirements, there may be a greater impact on a small prisoner transport entity that might have only one or two employees. Such an entity might temporarily have to suspend operations while its agents undergo training. On the other hand, a larger entity with more employees might be able to continue operations while its employees rotate through training. Similarly, it might be easier for larger entities to meet the minimum guard-to-prisoner ratio than it would be for smaller entities.

It should be stressed, however, that in proposing these regulations, the Department is merely implementing the mandatory requirements of the Act and that it has attempted to do so with the least economic impact upon any entity, large or small.

## D. Reporting and Recordkeeping Requirements

This proposed rule does not impose any additional reporting or recordkeeping requirements on private prisoner transport companies or on the State and local entities that contract with them.

## E. Issues Raised and Alternatives Suggested

### 1. Issues Raised

While consulting with representatives of the larger companies, the Department was apprised of an issue concerning the impact that this proposed rule would have on sheriffs' departments that employ private companies to transport violent prisoners. According to information provided to the Department, many of the local law enforcement offices across the nation employ smaller entities to transport prisoners, not the major companies, when the need arises. The Department, however, cannot exempt these smaller entities from the standards because they clearly fall into the definition of "private prisoner transport company" provided by Congress in the Act.

It is important to note that this proposed rule does not impose any minimum standards on governmental entities nor on their employees engaged in official conduct. However, the Department acknowledges the possibility that these entities may be

indirectly affected in contracting with private companies. The Department, therefore, seeks comment from both the smaller companies engaged in transporting violent prisoners as well as State and local entities that contract with private companies to meet their transportation needs.

## 2. Alternatives Suggested

An alternative suggestion was made during a consultation meeting between the Department and industry representatives concerning whether the Department should provide more guidance as to the quality of training required by this proposed rule. It was suggested an association, such as the ACA, develop an accredited training program and that any final rule should require private companies to receive accreditation from such a program. While the Department believes that this suggestion is worth further consideration, there is currently no such program in place and it is the Department's understanding that the earliest date by which the ACA could develop such a program would be January of 2002. Absent a standardized quality assurance program, the Department declines at this time to impose any requirements regarding the quality of training.

A second alternative that was suggested pertained to the requirement that private companies notify local law enforcement when traveling through a jurisdiction. Initially, the Department intended to require 24 hour advance notification to local law enforcement of any scheduled stop within a jurisdiction, with "scheduled stop" broadly defined. However, it was suggested during the Department's consultations with law enforcement and industry leaders that the definition of "scheduled stop" should be more narrowly defined. Law enforcement groups and industry leaders agreed that if a transport company had to provide notification for any stop, including for such things as refueling, eating, and bathroom trips, the notification requirement could pose a security threat. Therefore, the Department proposes to construe more narrowly the definition of "scheduled stop" so that the regulations would apply only to predetermined stops at State, local, or private correctional facilities for the purpose of loading or unloading prisoners, or using such facilities for overnight, meal, or restroom breaks.

A third alternative was suggested that would have delayed the implementation and enforcement of these provisions to allow smaller entities a longer period with which to comply with the new

regulations. The Act provides no authority for delayed implementation or delayed enforcement of the new regulations. It is the Department's view that public safety would be most effectively protected if these minimum safety and security standards are applied to all private prisoner transportation companies equally, without regard to the size of the company.

## F. Conclusion

The Department believes that, given the mandatory nature of the Act, this proposed rule meets its stated objectives while reducing as much as possible the burden imposed on private companies engaged in the private transport of violent prisoners. As statutorily required, the Department consulted with industry leaders and the ACA in developing this rule. The Department took into account their concerns, as well as the concerns of law enforcement representatives, in drafting the proposed rule. The Department intends to maintain an on-going dialogue with the affected industry and law enforcement entities. In addition, the Department is attempting to identify additional entities that might be affected by this proposed rule and looks forward to receiving additional comments to this proposed rule.

## List of Subjects in 28 CFR Part 97

Business and industry, Penalties, Prisoners, Transportation.

Accordingly, for the reasons set forth in the preamble, part 97 of chapter I of Title 28 of the Code of Federal Regulations is proposed to be added to read as follows:

## PART 97—STANDARDS FOR PRIVATE ENTITIES PROVIDING PRISONER OR DETAINEE SERVICES

Sec.

- 97.1 Purpose.
- 97.2 Definitions.
- 97.11 Pre-employment screening.
- 97.12 Employee training.
- 97.13 Maximum driving time.
- 97.14 Guard-to-prisoner ratio.
- 97.15 Employee uniforms and identification.
- 97.16 Clothing requirements for transported violent prisoners.
- 97.17 Mandatory restraints to be used while transporting violent prisoners.
- 97.18 Notification of local law enforcement prior to scheduled stops.
- 97.19 Immediate notification of local law enforcement in the event of an escape.
- 97.20 Standards to ensure the safety of violent prisoners during transport.
- 97.22 No Pre-emption of federal, State, or local laws or regulations.
- 97.24 No civil defense created.

97.30 Enforcement.

**Authority:** Public Law 106–560, 114 Stat. 2784 (42 U.S.C. 13726b).

## § 97.1 Purpose.

This part implements the provisions of The Interstate Transportation of Dangerous Criminals Act of 2000 (the Act), Public Law 106–560, 114 Stat. 2784 (42 U.S.C. 13726b) (enacted December 21, 2000), to provide minimum security and safety standards for private companies that transport violent prisoners on behalf of State and local jurisdictions.

## § 97.2 Definitions.

(a) *Crime of violence.* The term *crime of violence* has the same meaning as in section 924(c)(3) of title 18, United States Code. Section 924(c)(3) states that the term *crime of violence* means an offense that is a felony and—has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(b) *Private prisoner transport company.* The term *private prisoner transport company* (company) means any entity, other than the United States, a State, or an inferior political subdivision of a State, that engages in the business of transporting for compensation, individuals committed to the custody of any State or of an inferior political subdivision of a State, or any attempt thereof.

(c) *Violent prisoner.* The term *violent prisoner* means any individual in the custody of a State or an inferior political subdivision of a State who has previously been convicted of or is currently charged with a crime of violence or any similar statute of a State or the inferior political subdivisions of a State, or any attempt thereof.

## § 97.11 Pre-employment screening.

Private prisoner transport companies must adopt pre-employment screening measures for all potential employees. The pre-employment screening measures must include a background check and a test for use of controlled substances. The failure of a potential employee to pass either screening measure will act as a bar to employment.

(a) Background checks must include:

(1) A fingerprint-based criminal background check that disqualifies persons with either a prior felony conviction or a State or Federal conviction for a misdemeanor crime of

domestic violence as defined in 18 U.S.C. 921;

- (2) A Credit Report check;
- (3) A physical examination; and
- (4) A personal interview.

(b) Testing for controlled substances must be in accordance with applicable State law. In the event that there is no applicable State law, private prisoner transport companies must test potential employees for controlled substances in accordance with 49 CFR 382.301.

(c) The criminal background check references in paragraph (a)(1) of this section may not be submitted directly to the FBI or any other Federal agency. The private prisoner transport companies must work out the procedures for accomplishing the criminal background checks with their contracting governmental agencies.

#### **§ 97.12 Employee training.**

Private prisoner transport companies must require the completion of a minimum of 100 hours of employee training before an employee may transport violent prisoners. Training must include instruction in each of these six areas:

- (a) Use of restraints;
- (b) Searches of prisoners;
- (c) Use of force, including use of appropriate weapons and firearms;
- (d) Cardiopulmonary resuscitation (CPR);
- (e) Map reading; and
- (f) Defensive driving.

#### **§ 97.13 Maximum driving time.**

Companies covered under this part must adhere to the maximum driving time provisions applicable to commercial motor vehicle operators, under 49 CFR 395.3.

#### **§ 97.14 Guard-to-prisoner ratio.**

Companies covered under this part must adhere to certain minimum standards with respect to the number of employees required to monitor violent prisoners during transportation. Private prisoner transport companies must ensure that at least one guard be on duty for every six violent prisoners transported. This requirement does not preclude a contracting entity from establishing more stringent guard-to-prisoner ratios.

#### **§ 97.15 Employee uniforms and identification.**

(a) *Employee uniforms.* Uniforms used by private prisoner transport companies must meet the following requirements:

- (1) Uniforms must be readily distinguishable in style and color from official uniforms worn by United States

Department of Justice employees who transport violent offenders;

- (2) Uniforms must prominently feature a badge or insignia that identifies the employee as a prisoner transportation employee; and

- (3) Uniforms must be worn at all times while the employee is engaged in the transportation of violent prisoners.

(b) *Employee identification.* Identification utilized by private prisoner transport companies must meet the following requirements:

- (1) The identification credentials must clearly identify the employee as a transportation employee. The credentials must have a photograph of the employee that is at least one inch square, a printed personal description of the employee including the employee's name, the signature of the employee, and date of issuance; and

- (2) The employee must display proper identification credentials on his or her uniform and ensure that the identification is visible at all times during the transportation of violent prisoners.

#### **§ 97.16 Clothing requirements for transported violent prisoners.**

Companies covered under this part must ensure that all violent prisoners they transport are clothed in brightly colored clothing that clearly identifies them as violent prisoners, unless security or other specific considerations make such a requirement inappropriate.

#### **§ 97.17 Mandatory restraints to be used while transporting violent prisoners.**

Companies covered under this part must, at a minimum, require that violent prisoners be transported wearing handcuffs, leg irons, and waist chains unless the use of all three restraints would create a serious health risk to the prisoner, or extenuating circumstances (such as pregnancy or physical disability) make the use of all three restraints impracticable.

#### **§ 97.18 Notification of local law enforcement prior to scheduled stops.**

When transporting violent prisoners, private prisoner transport companies are required to notify local law enforcement officials 24 hours in advance of any scheduled stops in their jurisdiction. For the purposes of this part, a scheduled stop is defined as a predetermined stop at a State, local, or private correctional facility for the purpose of loading or unloading prisoners or using such facilities for overnight, meal, or restroom breaks. Scheduled stops do not include routine fuel stops or emergency stops.

#### **§ 97.19 Immediate notification of local law enforcement in the event of an escape.**

Private prisoner transport companies must be sufficiently equipped to provide immediate notification to law enforcement in the event of a prisoner escape. Law enforcement officials must receive notification no later than 15 minutes after an escape is detected unless the company can demonstrate that extenuating circumstances necessitated a longer delay. In the event of the escape of a violent prisoner, a private prisoner transport company must:

- (a) Ensure the safety and security of the remaining prisoners;
- (b) Provide notification within 15 minutes to the appropriate State and local law enforcement officials;
- (c) Provide notification as soon as practicable to the governmental entity that contracted with the transport company; and
- (d) Provide complete descriptions of the escapee and the circumstances surrounding the escape to State and local law enforcement officials if needed.

#### **§ 97.20 Standards to ensure the safety of violent prisoners during transport.**

Companies covered under this section must comply with applicable State and federal laws that govern the safety of violent prisoners during transport. In addition, companies covered under this section are to ensure that:

- (a) Protective measures are in place to ensure that all vehicles are safe and well-maintained;
- (b) Vehicles are equipped with efficient communications systems that are capable of immediately notifying State and local law enforcement officials in the event of a prisoner escape;
- (c) Policies are in effect to ensure the health and physical safety of the prisoners during transport, including a first-aid kit and employees who are qualified to dispense medications and administer CPR and emergency first-aid;
- (d) Policies are in effect to prohibit the mistreatment of prisoners, including prohibitions against covering a prisoner's mouth with tape, and against the use of excessive force and sexual misconduct;
- (e) Policies are in effect to ensure that juvenile prisoners are separated from adult prisoners during transportation, where practicable;
- (f) Policies are in effect to ensure that female prisoners be separated from male prisoners during transportation, where practicable;
- (g) Policies are in effect to ensure that female guards are on duty to supervise the transportation of female violent prisoners, where practicable; and

(h) Staff are well trained in the handling and restraint of prisoners, including the proper use of firearms and other restraint devices, and have received specialized training in the area of sexual harassment.

**§ 97.22 No pre-emption of federal, State, or local laws or regulations.**

The regulations in this part implement the Act and do not pre-empt any applicable federal, State, or local law that may impose additional obligations on private prisoner transport companies or otherwise regulate the transportation of violent prisoners. All federal laws and regulations governing interstate commerce (e.g., federal laws regulating the possession of weapons and Federal Aviation Administration rules and regulations governing travel on commercial aircraft) will continue to apply to private prisoner transport companies. The regulations in this part in no way pre-empt, displace, or affect the authority of States, local governments, or other federal agencies to address these issues.

**§ 97.24 No civil defense created.**

The regulations in this part on private prisoner transport companies are not intended to create a defense to any civil action, whether initiated by a unit of government or any other party. Compliance with the regulations in this part is not intended to and does not establish a defense against an allegation of negligence or breach of contract. Regardless of whether a contractual agreement establishes minimum precautions, the companies affected by the regulations in this part will remain subject to the standards of care that are imposed by constitutional, statutory and common law upon their activities (or other activities of a similarly hazardous nature).

**§ 97.30 Enforcement.**

Any person who is found in violation of the regulations in this part will:

(a) Be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each violation;

(b) Be liable to the United States for the costs of prosecution; and

(c) Make restitution to any entity of the United States, of a State, or of an inferior political subdivision of a State, that expends funds for the purpose of apprehending any violent prisoner who escapes from a prisoner transport company as the result, in whole or in part, of a violation of the regulations in this part promulgated pursuant to the Act.

Dated: December 11, 2001.

**John Ashcroft,**

*Attorney General.*

[FR Doc. 01-30937 Filed 12-14-01; 8:45 am]

BILLING CODE 4401-19-P

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Parts 1910, 1915, 1926 and 1928**

[Docket Number H-122A]

RIN 1218-AB37

**Indoor Air Quality**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Withdrawal of proposal.

**SUMMARY:** OSHA is withdrawing its Indoor Air Quality proposal and terminating the rulemaking proceeding. In the years since the proposal was issued, a great many state and local governments and private employers have taken action to curtail smoking in public areas and in workplaces. In addition, the portion of the proposal not related to environmental tobacco smoke (ETS) received little attention during the rulemaking proceedings, and much of that consisted of commenters calling into question significant portions of the proposal. As a result, record evidence supporting the non-ETS portion of the proposal is sparse.

Withdrawal of this proposal will also allow the Agency to devote its resources to other projects. The Agency's current regulatory priorities, as set forth in the Regulatory Agenda, include a number of important occupational safety and health standards. This document does not preclude any agency action that OSHA may find to be appropriate in the future.

**DATES:** The withdrawal is made on December 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Friedman, Director, OSHA Public Affairs Office, Occupational Safety and Health Administration, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 693-1999; Fax (202) 693-1634.

**Authority and Signature**

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to section 6(b) of the

Occupational Safety and Health Act of 1970 (84 Stat. 1594, 29 U.S.C. 655) and 29 C.F.R. 1911.18.

Signed at Washington, DC this 12th of December, 2001.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

[FR Doc. 01-31165 Filed 12-14-01; 8:45 am]

BILLING CODE 4510-26-M

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 51**

[CC Docket No. 01-318, CC Docket No. 98-56, CC Docket No. 98-157, CC Docket No. 96-98, CC Docket No. 98-141; DA 01-2859]

**Performance Measurements and Standards for Unbundled Network Elements and Interconnection**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This document grants a motion requesting an extension of the comment period established in the above-captioned docket. The order grants a 21-day extension to both the comment and reply comment deadlines.

**DATES:** Comments are due January 22, 2002 and Reply Comments are due February 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Cathy Carpino, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418-1580.

**SUPPLEMENTARY INFORMATION:**

1. On November 19, 2001, the Commission released a Notice of Proposed Rulemaking (66 FR 59759 (November 30, 2001)) establishing the pleading cycle for comments and reply comments in the above-captioned docket. The deadline for comments was established as December 31, 2001, and January 22, 2002 for reply comments.

2. On December 3, 2001, the United States Telecom Association (USTA) filed a Motion for Extension of Time to extend the date for comments and reply comments by 30 days. According to USTA, it seeks this extension to permit its membership the opportunity "to undertake the dialogue necessary to pursue an industry wide solution" to unbundled network element (UNE) performance standards in response to the *UNE Measurements and Standards Notice*. USTA argues that the current comment schedule, which, it notes, falls within the upcoming holiday season, would not provide USTA's members an