

**AEA NY E5 Lake Placid, NY [NEW]**

Lake Placid Airport, NY

(Lat. 44°15'52" N., long. 73°57'43" W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Lake Placid Airport, excluding that portion that coincides with the Saranac Lake, NY Class E airspace area.

\* \* \* \* \*

Issued in Jamaica, New York on April 17, 2003.

**Loretta Martin,**

Acting Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03-11231 Filed 5-6-03; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF COMMERCE****National Institute of Standards and Technology****15 CFR Part 270**

[Docket No: 021224331-3093-03]

RIN 0693-AB52

**Procedures for Implementation of the National Construction Safety Team Act**

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Director of the National Institute of Standards and Technology (NIST), Technology Administration, United States Department of Commerce, is today issuing a final rule amending regulations found at 15 CFR part 270 implementing the National Construction Safety Team Act ("Act"). An interim final rule with a request for public comments containing general provisions regarding implementation of the Act and establishing procedures for the collection and preservation of evidence obtained and the protection of information created as part of investigations conducted pursuant to the Act was published in the **Federal Register** on January 30, 2003. This final rule responds to comments received in response to the January 30, 2003 notice. The changes include clarifications and editorial corrections to several sections of the interim final rule.

**DATES:** This rule is effective on June 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dr. James E. Hill, Deputy Director, Building and Fire Research Laboratory, National Institute of Standards and Technology, Mail Stop 8600, Gaithersburg, MD 20899-8600, telephone number (301) 975-5900.

**SUPPLEMENTARY INFORMATION:****Background**

The National Construction Safety Team Act, Pub. L. 107-231, was enacted to provide for the establishment of investigative teams ("Teams") to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted in substantial loss of life or that posed significant potential of substantial loss of life. The purpose of investigations by Teams is to improve the safety and structural integrity of buildings in the United States. A Team will (1) Establish the likely technical cause or causes of the building failure; (2) evaluate the technical aspects of evacuation and emergency response procedures; (3) recommend, as necessary, specific improvements to building standards, codes, and practices based on the findings made pursuant to (1) and (2); and recommend any research and other appropriate actions needed to improve the structural safety of buildings, and improve evacuation and emergency response procedures, based on the findings of the investigation. Section 2(c)(1) of the Act requires that the Director develop procedures for certain activities to be carried out under the Act as follows: regarding conflicts of interest related to service on a Team; defining the circumstances under which the Director will establish and deploy a Team; prescribing the appropriate size of Teams; guiding the disclosure of information under section 7 of the Act; guiding the conduct of investigations under the Act; identifying and prescribing appropriate conditions for provision by the Director of additional resources and services Teams may need; to ensure that investigations under the Act do not impede and are coordinated with any search and rescue efforts being undertaken at the site of the building failure; for regular briefings of the public on the status of the investigative proceedings and findings; guiding the Teams in moving and preserving evidence; providing for coordination with Federal, State, and local entities that may sponsor research or investigations of building failures; and regarding other issues.

NIST published an interim final rule with a request for public comments in the **Federal Register** on January 30, 2003 (68 FR 4693), seeking public comment on general provisions regarding implementation of the Act and on provisions establishing procedures for the collection and preservation of evidence obtained and the protection of information created as

part of investigations conducted pursuant to the Act, including guiding the disclosure of information under section 7 of the Act (§§ 270.350, 270.351, and 270.352) and guiding the Teams in moving and preserving evidence (§ 270.330). These general provisions and procedures, comprising Subparts A and D of the rule, are necessary to the conduct of the investigation of the World Trade Center disaster, already underway, and became effective immediately upon publication.

The comment period closed on March 3, 2003.

In the near future, NIST plans to publish in the **Federal Register** a notice of proposed rulemaking and request for comments, establishing the remaining procedures necessary for implementation of the Act.

**Summary of Public Comments Received by NIST in Response to the January 30, 2003 Interim Final Rule, and NIST's Response to Those Comments**

NIST received two responses to the request for comments. One response was from a private, not-for-profit organization that develops international building codes. The second response was from a local government agency. A detailed analysis of the comments follows.

*Comment:* One comment encouraged NIST to use a particular code development process. The commenter offered to assist NIST in developing and advancing the necessary code change proposals that will advance the recommendations of the investigation team.

*Response:* This comment is outside the scope of this rulemaking.

*Comment:* One comment stated that the proposed rule should consider specifying the criteria for the Team's deployment.

*Response:* As required by section (c)(1)(B) of the Act, NIST will publish procedures "defining the circumstances under which the Director will establish and deploy a Team" in its notice of proposed rulemaking setting forth the remaining procedures necessary to implement the Act.

*Comment:* One comment stated that "[c]onsideration should be given to the question of whether a finding or establishing of "the likely technical cause or causes of the building failure" will have evidentiary weight or authority", and if so, "consideration should also be given to mandatory rights to a hearing or other participation \* \* \*".

*Response:* By statute, "[n]o part of any report resulting from such investigation, or from an investigation under the

National Construction Safety Team Act, shall be admitted as evidence or used in any suit or action for damages arising out of any matter mentioned in such report.”

*Comment:* One comment stated that the proposed regulations may conflict with and override New York City inspection and enforcement procedures. Provisions should be considered that prevent NIST from interfering with such activities.

*Response:* The Act and its implementing regulations pertain to the investigation into the technical causes of specific building failures and do not affect routine building inspections and enforcement activities by state or local government.

*Comment:* One comment stated that the requirements in the proposed regulations should include the sharing of information at all levels of City agencies, and not only by “law enforcement” and should include local police, fire, etc.

*Response:* NIST expects to work closely with state and local governments during NIST investigations of building failures.

*Comment:* One comment stated that although the proposed regulations permit parties to retain *copies* of documentary evidence taken by the Team, the proposed regulations do not address how parties may gain subsequent access to the original documentary evidence and/or material samples, which may be needed for the preparation of claims and defenses.

*Response:* The commenter apparently confuses the requirements for members of the public who are in possession of evidence with the requirements for investigation participants.

Section 270.313(c), which governs requests for documentary evidence from members of the public, specifically requires a request to be in writing and to include, among other items, “(4) A request that each person to whom the request is directed produce and permit inspection and copying of the documents and physical evidence in the possession, custody, or control of that person \* \* \*.” Under this provision, members of the public who submit evidence to an investigation may keep the original and provide the Team a copy.

Section 270.310 governs evidence collected by investigation participants who are not NIST employees. It requires that such investigation participants transfer original evidence to NIST, and retain a copy of the evidence only if necessary to carry out their duties under the investigation. This requirement ensures that all evidence collected

during the course of an investigation be held in a central location for recordkeeping and chain of custody purposes.

*Comment:* One comment stated that credentialing should be determined in collaboration with local law enforcement.

*Response:* Credentialing must be accomplished in accordance with the laws and regulations governing Federal investigations.

*Comment:* One comment suggested that NIST address the issue of when an investigation is concluded and the Team’s authority dissolves.

*Response:* NIST plans to include a provision addressing this issue in its planned notice of proposed rulemaking setting forth the remaining procedures necessary to implement the Act.

*Comment:* One comment pointed out an inconsistency in the use of the terms “evidence” and “information” in § 270.310. The same commenter suggested a revision to § 270.312 to include both “evidence” and “information”.

*Response:* NIST agrees that the use of both “evidence” and “information” in § 270.310 is confusing. Section 270.310 has been revised to replace the word “information” with the word “evidence.” This revision eliminates the need for the suggested revision to § 270.312.

*Comment:* One comment identified an incorrect reference in § 270.314. The reference to § 270.312 should instead refer to § 270.313.

*Response:* NIST has corrected this error.

*Comment:* One comment suggested that the term “confidential information” be defined in the regulations.

*Response:* NIST has deleted the sentence in § 270.312 that contains the only reference in the regulation to “confidential information.” The receipt and release of information is addressed elsewhere in the regulation.

*Comment:* One comment suggested that § 270.313(b) be revised by adding a requirement that requests for responses to written questions include a “statement that the Director has established a Team, and that the Lead Investigator (name) has requested information.”

*Response:* NIST believes that the language of § 270.313(b)(1) is sufficient to make clear that the request is made under the authority of the Act.

*Comment:* One comment suggested that § 270.315 be revised by combining two of the factors the Director will consider in determining whether to issue a subpoena. Two of the factors NIST included in the interim final rule

are: (1) Whether the testimony, documentary, or physical evidence is required for an investigation being conducted pursuant to the Act; and (2) Whether the evidence is relevant to the purpose of the investigation. The commenter suggested combining these two factors to read: “(1) Whether the testimony, documentary, or physical evidence is relevant to an investigation being conducted pursuant to the Act.”

*Response:* NIST disagrees with the suggested revision. Whether evidence is relevant to an investigation is an important factor to consider; however, not all relevant evidence is necessarily required for an investigation. NIST will only issue subpoenas for relevant evidence that is required for an investigation.

*Comment:* One comment suggested that subpoenas either be signed by the General Counsel, in addition to the Director, or that subpoenas contain a statement that the General Counsel has concurred in the issuance of the subpoena. The commenter suggested that § 270.315(c)(5) be revised to reflect change.

*Response:* Neither of these suggested changes is necessary because the existing regulations require the concurrence of the General Counsel prior to issuance of a subpoena.

*Comment:* One comment suggested revising § 270.315(d)(2) by adding the words “return receipt requested”, to require that service of a subpoena will be by certified mail, return receipt requested, or delivery to the last known residence or business address of such person or agent.

*Response:* NIST agrees. Section 270.315(d)(2) has been revised to reflect the change.

*Comment:* One comment suggested paragraph (a) of § 270.323 repeat the words “request permission to” before “take action necessary, appropriate, and reasonable in light of the nature of the property to be inspected and to carry out the duties of the Team.”

*Response:* NIST disagrees. The paragraph is clear as it was originally written.

#### **Additional Information**

##### *Executive Order 12866*

This rule has been determined not to be significant under section 3(f) of Executive Order 12866.

##### *Executive Order 12612*

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

*Administrative Procedure Act*

Prior notice and an opportunity for public comment are not required for this rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A).

*Regulatory Flexibility Act*

Because notice and comment are not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. As such, a regulatory flexibility analysis is not required, and none has been prepared.

*Paperwork Reduction Act*

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

There are no collections of information involved in this rulemaking.

*National Environmental Policy Act*

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

**List of Subjects in 15 CFR Part 270**

Administrative practice and procedure; Buildings and facilities; Disaster assistance; Evidence; Investigations; National Institute of Standards and Technology; Science and technology; Subpoena.

Dated: May 2, 2003.

**Karen H. Brown,**  
*Deputy Director.*

■ For the reasons set forth in the preamble, Title 15 of the Code of Federal Regulations is amended as follows:

**PART 270—NATIONAL CONSTRUCTION SAFETY TEAMS**

■ 1. The authority citation for part 270 is revised to read as follows:

**Authority:** Pub. L. 107–231, 116 Stat. 1471 (15 U.S.C. 7301 *et seq.*).

■ 2. Section 270.310 is amended by revising the introductory text to read as follows:

**§ 270.310 Evidence collected by investigation participants who are not NIST employees.**

Upon receipt of evidence pursuant to an investigation under the Act, each

investigation participant who is not a NIST employee shall:

\* \* \* \* \*

**§ 270.312 [Amended]**

■ 3. Section 270.312 is amended by removing the last sentence.

**§ 270.314 [Amended]**

■ 4. In § 270.314, the reference to “§ 270.312” is revised to read “§ 270.313”.

■ 5. Section 270.315 is amended by revising paragraph (d)(2) to read as follows:

**§ 270.315 Subpoenas.**

\* \* \* \* \*

(d) \* \* \*

(2) By certified mail, return receipt requested, or delivery to the last known residence or business address of such person or agent; or

\* \* \*

\* \* \* \* \*

[FR Doc. 03–11361 Filed 5–6–03; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION****17 CFR Part 232**

[Release Nos. 33–8224; 34–47766; 35–27672; 39–2407; IC–26032]

RIN 3235–AG96

**Adoption of Updated EDGAR Filer Manual**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (the Commission) is adopting revisions to the EDGAR Filer Manual to reflect updates to the EDGAR system based upon recent rulemaking activity related to mandating the electronic filing, and Web site posting by issuers with corporate Web sites, of beneficial ownership reports filed by officers, directors and principal security holders under section 16(a) of the Securities Exchange Act of 1934, generally as required by section 403 of the Sarbanes-Oxley Act of 2002, as well as the fact that EDGAR will no longer accept magnetic tape cartridges as a filing medium. The new release will include a new Online Forms Internet Web site (<https://www.onlineforms.edgarfiling.sec.gov>) that will allow for the online creation and submission of ownership reports Forms 3, 4 and 5; their amendments, Forms 3/A, 4/A and 5/A; and, a minor

update to EDGARLink submission template 2 to disallow the filing of the ownership forms due to the online capability. The revisions to the Filer Manual reflect these changes, most significantly, within the addition of a third Volume entitled “EDGAR Release 8.5 OnlineForms Filer Manual Volume III.” Volumes I and II of the Filer Manual, EDGARLink and the N–SAR Supplement respectively, have been modified, mainly, to reference the new Online Forms Web site and the removal of magnetic tape cartridges as a filing medium. Support for filing via magnetic tape cartridges is being removed due to lack of use by filers. This feature was last used officially by a filer, for a live filing, in 2001, and only by a few filers that whole year. The updated manual will be incorporated by reference into the Code of Federal Regulations.

**EFFECTIVE DATE:** May 7, 2003. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of May 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** In the Office of Information Technology, Rick Heroux at (202) 942–8800; for questions concerning Investment Management company filings, Ruth Armfield Sanders, Senior Special Counsel, or Shaswat K. Das, Senior Counsel, Division of Investment Management, at (202) 942–0978; and for questions concerning Corporation Finance company filings, Herbert Scholl, Office Chief, EDGAR and Information Analysis, Division of Corporation Finance, at (202) 942–2940.

**SUPPLEMENTARY INFORMATION:** Today we are adopting an updated EDGAR Filer Manual (Filer Manual). The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.<sup>1</sup> It also describes the requirements for filing using modernized EDGARLink.<sup>2</sup>

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic

<sup>1</sup> We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (Apr. 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on September 17, 2001. See Release No. 33–8007 (September 24, 2001) [66 FR 49829].

<sup>2</sup> This is the filer assistance software we provide filers filing on the EDGAR system.