

is impracticable, unnecessary, and contrary to the public interest. This rule sets the effective date for a rulemaking that has already been through the public comment process. Seeking prior public comments on the effective date is impracticable, as well as contrary to the public interest in the orderly promulgation and implementation of this rule.

In consideration of the foregoing, the FAA announces the effective date of 14 CFR part 43, Amendment 43-40, published July 14, 2005. The amendments require that the maintenance, preventive maintenance, and alterations be performed in accordance with a Bilateral Aviation Safety Agreement (BASA) between the United States and Canada and associated Maintenance Implementation Procedures (MIP). The MIP was signed and entered into force on August 31, 2006; accordingly, the amendments became effective on that date.

Issued in Washington, DC, on November 22, 2006.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. E6-20254 Filed 11-29-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2006-25270; Airspace Docket No. 06-ASO-9]

Establishment of Class D Airspace; Eastman, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the name of the Eastman-Dodge County Airport to Heart of Georgia Regional Airport and establishes Class D airspace at Eastman, GA. On October 9, 1995, the Eastman-Dodge County Airport Authority adopted a name change for the airport. A non-Federal contract tower with a weather reporting system has been constructed at Heart of Georgia Regional Airport. Therefore, the airport meets criteria for Class D airspace. Class D surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,500 feet

MSL within a 4.1-mile radius of the airport.

EFFECTIVE DATE: 0901 UTC, January 18, 2000. The Director of the Federal Register approves this incorporation by reference under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Group Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

SUPPLEMENTARY INFORMATION:

History

On August 2, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by changing the name of the Eastman-Dodge City Airport and establishing Class D airspace at Eastman, GA (71 FR 43678). This action provides adequate Class D airspace for IFR operations at Heart of Georgia Regional Airport. Designations for Class D Airspace are published in FAA Order 7400.9P, effective September 16, 2006, which is incorporated by reference in 14 CFR part 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the name of the Eastman-Dodge County Airport to Heart of Georgia Regional Airport and establishes Class D airspace at Eastman, GA.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends § 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, effective September 16, 2006, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO GA D Eastman, GA [NEW]

Heart of Georgia Regional Airport, GA
(Lat. 32°12'51" N, long. 83°07'41" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.1-mile radius of the Heart of Georgia Regional Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on October 6, 2006.

Anne Boykin,

Acting Group Manager, System Support, Eastern Service Center.

[FR Doc. 06-9232 Filed 11-29-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[NM-044-FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Secretary of the Interior (Secretary) is announcing the approval of an amendment to the New Mexico regulatory program (the “New Mexico program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and the removal of the remaining condition of program approval. New Mexico proposed addition of rules and revision of a statute concerning the award of costs and expenses, including attorney fees, incurred in connection with the administrative and judicial appeals process.

New Mexico revised its program to be consistent with SMCRA and the corresponding Federal regulations.

EFFECTIVE DATE: November 30, 2006.

FOR FURTHER INFORMATION CONTACT: Willis Gainer, Telephone: (505) 248-5096, e-mail address: wgainer@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the New Mexico Program
- II. Submission of the Proposed Amendment
- III. Secretary’s Findings
- IV. Summary and Disposition of Comments
- V. Secretary’s Decision
- VI. Procedural Determinations

I. Background on the New Mexico Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary’s findings, the disposition of comments, and conditions of approval in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico’s program and program amendments at 30 CFR 931.10, 931.11, 931.13, 931.15, 931.16, and 931.30.

II. Submission of the Proposed Amendment

By letter dated November 18, 2005, New Mexico sent us an amendment to

its program (Administrative Record No. 874) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment in response to a condition of the New Mexico program approval at 30 CFR 931.11(e), concerning the award of attorney fees and legal costs.

We announced receipt of the proposed amendment in the February 13, 2006, **Federal Register** (71 FR 7477; Administrative Record No. NM-882). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment’s adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 15, 2006. We received one agency comment from the State Historic Preservation Officer and one public comment from the Zuni Tribe.

III. Secretary’s Findings

Following is the finding the Secretary made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. The Secretary is approving the amendment as described below.

New Mexico Surface Mining Act (NMSA), Section 69-25A-29.F, and New Mexico Annotated Code (NMAC), Section 19.8.12.1204, Award of Legal Costs and Expenses

The Secretary required, as a condition of program approval (codified at 30 CFR 931.11(e)), that New Mexico implement regulations containing provisions which are the same as or similar to those in 43 CFR 4.1290-4.1296, relating to the award of costs, including attorney fees, in administrative proceedings, or otherwise amend its program to accomplish the same result.

OSM’s current standard for approval of State program provisions concerning assessment of costs in administrative proceedings is that the State statutory and regulatory provisions must be in accordance with section 525(e) of SMCRA and consistent with 43 CFR Part 4. “Same or similar” is OSM’s standard for approval of State program counterparts to the Federal provisions in section 518 of SMCRA concerning penalties, and section 521 of SMCRA concerning enforcement.

In response to the condition at 30 CFR 931.11(e), New Mexico proposes to (1) revise its statutory provision at NMSA, section 69-25A-29.F, concerning administrative review and the assessment of costs and expenses, including attorney fees, for a person’s participation in administrative proceedings, including judicial review of agency actions, and (2) add newly-

created rules at NMAC, section 19.8.12.1204, which contain provisions allowing for the award of appropriate costs and expenses, including attorney fees, reasonably incurred as a result of participation in an administrative review.

NMSA, Section 69-25A-29.F

New Mexico proposes to revise NMSA, section 69-25A-29.F, concerning administrative review and the assessment of costs and expenses, including attorney fees, for a person’s participation in administrative proceedings, including judicial review of agency actions, by deleting the provision stating that no such assessment shall be imposed upon the Director of the New Mexico program. With this revision, the Director of the New Mexico program has authority to determine whether expenses (that have been reasonably incurred for or in connection with participation in administrative proceedings, including any judicial review of agency actions) may be assessed against any party which would now include the Director.

Section 525(e) of SMCRA allows for an award of a sum equal to the aggregate amount of all costs, expenses, and attorney fees determined by the Secretary of the Interior to have been reasonably incurred by a person for or in connection with his participation in administrative proceedings, including any judicial review of agency actions.

NMAC, Section 19.8.12.1204

New Mexico proposes addition of rules at NMAC, sections 19.8.12.1204A-G, which establish procedures, timeframes and standards for petitions for award of legal costs and expenses. New Mexico’s proposed rules are intended to be consistent with the corresponding Federal regulations at 43 CFR 4.1290-4.1296, thereby satisfying the condition of State program approval at 30 CFR 931.11(e). With the exceptions discussed below, New Mexico’s proposed revisions are substantively the same as the corresponding Federal regulations at 43 CFR 4.1290-4.1296.

No State Counterpart to 43 CFR 4.1294(a)(2)

New Mexico does not propose a counterpart regulation to 43 CFR 4.1294(a)(2) concerning the award of costs and expenses for alleged discriminatory acts. The regulations pertaining to the reporting and handling of such acts are found at 30 CFR Part 830 (now Part 865). These regulations were promulgated pursuant to section 703 of the Act. Because the provisions

for Employee Protection in section 703 of SMCRA are strictly Federal requirements, State programs are not required to include counterparts to these requirements. Therefore, the lack of a New Mexico program counterpart provision to the Federal regulation at 43 CFR 4.1294(a)(2) is not inconsistent with the Act.

NMAC, Section 19.8.12.1204E(2), and 43 CFR 4.1294(b), Award of Fees to Those Who Prevail in Whole or Significant Part and Achieve at Least Some Degree of Success on the Merits

New Mexico's proposed rule at NMAC, section 19.8.12.1204E(2), provides for awards from the Mining and Minerals Division (MMD) to a person other than the permittee who initiates or participates in a proceeding under the New Mexico program, prevails in whole or in significant part and achieves at least some degree of success on the merits. The award is contingent upon a finding that the person substantially contributed to the issues' full and fair determination, except that the contribution of the person who did not initiate the proceeding must be separate and distinct from the contribution made by the person initiating the proceeding. New Mexico's proposed rule differs from the Federal counterpart regulation at 43 CFR 4.1294(b) in that it requires that the person prevail in whole or in significant part where the Federal rule requires that the person prevail in whole or in part without the "significant" qualifier. New Mexico's proposed rule also distinguishes the contribution to a proceeding made by a participating person from the contribution made by an initiating party.

For the reasons discussion below, we believe that New Mexico's qualifying language adds reasonable clarification for administrative and judicial reviewers and is, therefore, not inconsistent with the Federal regulations.

In order to establish procedures governing petitions for the award of costs and expenses under section 525(e), the Secretary promulgated the regulations which appear at 43 CFR 4.1290–4.1296. The original regulations were published on August 3, 1978 (43 FR 34376). The 1978 regulations at 43 CFR 4.1294(b) provided that costs and expenses may be awarded from OSM to persons other than the permittee, if the person "made a substantial contribution to the full and fair determination of the issues." They did not contain criteria with regard to the degree of success on

the merits to be achieved for such awards.

After the Secretary conditionally approved the New Mexico Regulatory program, the 1978 regulations at 43 CFR 4.1294(b) were revised (50 FR 47222; November 15, 1985). The revision was prompted by the decision of the United States Supreme Court in *Ruckelshaus v. Sierra Club*, 463 U.S. 680 (1983), which held in a statutory context similar to section 525(e) of the Act, that an award of costs and expenses is conditioned upon a party prevailing in whole or in part in the underlying proceeding. In view of the court's decision in *Ruckelshaus*, the Secretary revised paragraph (b) of 30 CFR 4.1294 to state explicitly that eligibility to receive an award is "subject to the condition that the person shall have prevailed in whole or in part, achieving at least some degree of success on the merits." The 1985 revision retained the requirement that the "person made a substantial contribution to a full and fair determination of the issues."

Subsequent court cases have held that plaintiffs may be considered "prevailing parties" for attorney fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought.¹ The relief cannot be merely declaratory or procedural; it must reach the underlying merits of the claim. The level of success is relevant to the amount of fees to be awarded.

In the context of the above discussion, the Secretary finds that New Mexico's proposed NMAC, section 19.8.12.1204E(2), is consistent with and no less effective than the Act and counterpart Federal regulation at 43 CFR 4.1294(b).

Removal of Program Condition

Based on the above discussion, the Secretary (1) finds that New Mexico's proposed revision of NMSA, section 69–25A–29.F, and addition of NMAC, section 19.8.12.1204, satisfy the requirements of the program condition at 30 CFR 931.11(e) and (2) therefore, removes the condition.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. NM–876). We received one comment letter.

By letter dated February 2, 2006 (Administrative Record No. NM–879), we received comments from the

Governor of the Zuni Tribe in Zuni, New Mexico. Our response to the Governor's comments regarding New Mexico's proposed rule revisions NMAC, section 19.8.12.1204, concerning the award of attorney fees, is discussed below.

The Governor raised concerns about a provision at proposed NMAC, section 19.8.12.1204.E(5), that allows attorney fees to be awarded to the New Mexico Minerals and Mining Division (MMD) by the Director of the New Mexico program. The Director of the New Mexico program is also the Director of MMD. The Governor expressed concern that the allowance for the agency to collect attorney fees would intimidate parties from challenging agency actions.

The authority for the Director of the New Mexico program to award attorney fees to any party, including MMD, has existed in New Mexico's statute at NMSA, section 69–25A–29.F, since 1979. New Mexico's proposed rules at NMAC, section 19.8.12.1204, are intended to provide counterpart provisions to the Federal regulations at 43 CFR 4.1290–1296, which restrict the right of certain parties, including the agency and the permittee, to collect fees from other parties.

As discussed in the Secretary's finding above, New Mexico's proposed rule at NMAC, section 19.8.12.1204.E(5), which allows the award of attorney fees to MMD is consistent with New Mexico's existing statute at NMSA, section 69–25A–29.F, and with the counterpart Federal regulations at 43 CFR 4.1290–1296. Both New Mexico's proposed rule and the Federal regulations limit an agency's right to collect attorney fees in either an administrative or judicial proceeding to situations where the agency can demonstrate that another party participated in the proceeding in bad faith and for the purpose of harassing or embarrassing the government. Furthermore, as discussed above, without the proposed revision at NMAC, section 19.8.12.1204.E(5), the agency could apply, under the existing statutory provision for attorney fees, on the same basis as other parties.

For the reasons discussed above, we are not requiring any revision of New Mexico's proposed rules in response to these comments.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the New Mexico program (Administrative Record No. NM–876). We received no comments.

¹ *Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 789 (1989).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that New Mexico proposed to make in this amendment pertains to air or water quality standards. Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record No. NM-876). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On December 20, 2005, we requested comments on New Mexico's amendment (Administrative Record No. NM-876). The SHPO responded on February 9, 2006, that it had no comments because the proposed amendments do not affect cultural resources (Administrative Record No. NM-881). We did not receive a response from the ACHP.

V. Secretary's Decision

Based on the above findings, we approve New Mexico's November 18, 2005, proposed amendment, as revised on March 27, 2006.

We approve New Mexico's proposed statutory revisions as they were enacted by New Mexico (effective on June 17, 2005) and rule revisions as they were promulgated by New Mexico (effective on April 28, 2006).

To implement this decision, we are amending the Federal regulations at 30 CFR part 931, which codify decisions concerning the New Mexico program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is

based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship

between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business

Regulatory Enforcement Fairness Act.
This rule:

- a. Does not have an annual effect on the economy of \$100 million.
 - b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
 - c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.
- This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 9, 2006.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

■ For the reasons set out in the preamble, 30 CFR part 931 is amended as set forth below:

PART 931—NEW MEXICO

■ 1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 931.11 [Amended]

- 2. Section 931.11 is amended by removing and reserving paragraph (e).
- 3. Section 931.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

§ 931.15 Approval of New Mexico regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
November 18, 2005	November 30, 2006	NMSA, sections 69–25A–29.F, concerning award of legal costs and expenses; and NMAC, sections 19.8.12.1204.A through G, concerning award of legal costs and expenses, including attorney fees.

[FR Doc. 06–9461 Filed 11–29–06; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 655

[Docket No. FTA–2006–24592]

RIN 2132–AA86

Controlled Substances and Alcohol Misuse Testing

AGENCY: Federal Transit Administration (FTA), United States Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule codifies existing FTA administrative guidance for safety-sensitive employees of ferryboat operations that are subject to the drug and alcohol (D&A) testing regulations of both FTA and the United States Coast Guard (USCG). This rule will provide regulatory relief to ferryboat operators who were previously subject to duplicative D&A testing regulations, and improve ferryboat operator compliance with FTA D&A testing regulations.

This rule does not adopt the proposed rule with respect to certain motor carrier operators who are subject to the D&A testing regulations of both FTA and the Federal Motor Carrier Safety Administration (FMCSA). FTA will retain its current guidance and interpretation with respect to these motor carrier operators.

EFFECTIVE DATE: This rule is effective January 2, 2007.

FOR FURTHER INFORMATION CONTACT: For program issues, Gerald Powers, Office of Safety and Security, (617) 494–2395 (telephone); (202) 366–7951 (fax); or *Gerald.Powers@dot.gov* (e-mail). For legal issues, Shauna Coleman, Office of the Chief Counsel, (202) 366–4011 (telephone); (202) 366–3809 (fax); or *Shauna.Coleman@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

A copy of this rule and comments and material received from the public, as well as any documents indicated in the preamble as being available in the docket, are part of docket FTA–2006–24592, and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401 on the

plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

An electronic copy of this rule and comments are available online through the Document Management System (DMS) at: <http://dms.dot.gov>. Enter docket number 24592 in the search field. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

Internet users may also download an electronic copy of this document by using a computer, modem and suitable communications software from the Government Printing Office’s Electronic Bulletin Board Service at (202) 512–1661. Additionally, internet users may reach the Office of the Federal Register’s home page at: <http://www.nara.gov/fedreg> and the Government Printing Office’s Web page at: <http://www.gpoaccess.gov/fr/index.html>.

I. Background

In 2001, FMCSA issued a rule that eliminated duplicative D&A testing regulations for holders of Commercial Drivers Licenses (CDLs) who provide public transportation services. This rule