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SUPPLEMENTARY INFORMATION:

Public Participation

FRA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written documents.

We will file in the docket all written comments that we receive, as well as a report summarizing each substantive public contact with FRA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it's possible to do so without incurring expense or delay. We may change this proposal in light of the comments that we receive.

If you want FRA to acknowledge receipt of your comments on the proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

As stated above, in December 2001, FRA proposed to amend part 219 by making FRFB employees subject to the employee assistance program, random alcohol and drug testing, and pre-employment drug testing requirements. In May 2002, two months after FRA had held a public hearing and closed the comment period, the Canadian Embassy delivered a diplomatic note objecting to the proposed rule, while in July 2002 the Canadian Human Rights Commission issued a long-awaited policy (Policy) on the alcohol and drug testing of workers. In response to these developments, FRA published a notice (67 FR 75996, December 10, 2002)

which asked for comment on the Policy and reopened the comment period until further notice to allow for additional consultations with Canada and Mexico. Since then, FRA has twice had the opportunity to discuss these issues: first, at the annual Transport Canada/FRA meeting in March 2003 and, more recently, at the Land Transportation Standards Subcommittee meeting in May 2003. At the latter meeting FRA also discussed the NPRM with representatives of the Mexican Government; the Mexican representatives indicated that Mexico would be issuing regulations in the near future that would be compatible with FRA's rules.

Based upon the considerations discussed among FRA and the representatives of the Canadian and Mexican governments, as well as other comments to the docket, FRA intends to issue a final rule that would revise the NPRM as outlined below. FRA believes that the final rule will reasonably address the concerns which Canadian and Mexican representatives expressed during the consultation process. FRA will, of course, carefully consider any comments that are filed when issuing the final rule.

1. The proposed rule will be made final, but with significant revisions.

2. FRA will include in the final rule an exclusion permitting foreign-based employees of foreign railroads to enter into the United States to perform train or dispatching service for a distance of up to 10 route miles under the present exceptions (which will have the effect of facilitating interchange with U.S. railroads at the majority of current gateways). FRA will work with Transport Canada to confirm the locations and mileage of existing Canadian gateways.

3. FRA will entertain and consider requests for waiver in other circumstances where consistent with railroad safety and in the public interest. Existing crew assignments will remain subject to the current exceptions until waiver requests can be considered on their merits, provided such requests are filed within 120 days of the publication of the final rule.

4. Obligations of foreign railroads with respect to testing may, at the election of the railroad, be conducted on U.S. soil. Any employee testing positive or refusing a test will be subject to removal from service only with respect to service in the U.S. Canadian and Mexican railroads will otherwise be free to handle such employees under applicable law in their home countries.

5. Even where no exception or waiver applies, FRA will except current

employees from pre-employment drug testing requirements. Only employees entering train or dispatching service in the U.S. after the effective date of the final rule will be required to be pre-employment tested. (This is consistent with FRA's approach to U.S. workers as the pre-employment drug testing program was initiated.) Again, FRA is indifferent to whether specimens are collected in Canada (for Canadian railroads), Mexico (for Mexican railroads), or the U.S., so long as United States Department of Transportation workplace procedures (49 CFR part 40) are observed and records are maintained as required. Canadian and Mexican employers remain free to retain any employee testing positive or refusing a test, although these employees may not be used for service in the U.S.

6. The final rule will also allow FRA's Associate Administrator for Safety to recognize a foreign government's program as compatible to that of FRA. To be so recognized, the foreign government program must include the essential elements of part 219, including pre-employment testing and random testing, and adopt testing procedures, criteria and assays equivalent to those used in part 40. Once granted, program recognition remains valid so long as the program retains these elements and foreign-based railroads comply with the program's requirements.

FRA believes that the approach outlined above is the best compromise that can be fashioned to accommodate the concerns of some commenters while continuing to be responsible for control of alcohol and drug use in railroad operations within U.S. borders.

Issued in Washington, DC on July 22, 2003.

Allan Rutter,

Federal Railroad Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 072103A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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