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Synopsis of Notice of Proposed Rulemaking

1. The Notice of Proposed Rulemaking invites comment on proposals to revise the rate base treatment of prepaid postretirement benefits other than pensions (OPEB) costs recorded in Account 1410, Other Noncurrent Assets, and all items in Account 4310, Other Long-Term Liabilities, including accrued liabilities related to OPEBs. The Commission notes that it does not agree with the suggestion by some parties that modification of its Part 65 regulations be deferred until the conclusion of several pending investigations of LEC tariffs, which include exogenous adjustments for OPEB costs, but invites comment on this issue.

2. The Notice of Proposed Rulemaking proposes to include prepaid OPEB costs recorded in Account 1410, Order Noncurrent Assets, in the interstate rate base. The rationale for this action is our tentative conclusion that prepaid OPEB costs in excess of the SFAS-106 cost calculation earn a return, which benefits ratepayers by reducing amounts companies must accrue in future periods. Because investors fund these excess prepayments, this Notice proposes to include these excess prepayments in the rate base. The Commission invites comment on this proposal.

3. Currently, unfunded accrued pension costs recorded in Account 4310 are removed from the rate base, although other items recorded in Account 4310, such as accrued OPEB liabilities, are not removed from the rate base. The Notice of Proposed Rulemaking proposes to accord to the accrued OPEB liabilities recorded in Account 4310 the same rate base treatment presently accorded to unfunded accrued pension costs without modifying the rate base treatment for other items recorded in Account 4310. Alternatively, the Notice of Proposed Rulemaking also proposes to exclude all amounts recorded in Account 4310 from the interstate rate base. It is the Commission's tentative conclusion that all items recorded in Account 4310 should be removed from the rate base because these amounts are zero-cost sources of funds, those funds

provided to a carrier without cost to investors. The Commission invites comment on these proposals.

4. In the Notice the Commission states that this rulemaking is a non-restricted notice and comment proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules, 47 CFR 1.1202, 1.1203, 1.1206.

5. In the Notice the Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposals in this proceeding are adopted, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. Because of the nature of local exchange and access service, the Commission has concluded that LECs, including small LECs, are dominant in their fields of operation and therefore are not "small entities" as defined by that act. The Secretary has sent a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for advocacy of the Small Business Administration in accordance with Section 603(a) of that act.

Ordering Clause

6. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 4(j), 201 through 205, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201 through 205, 220 and 403, notice is hereby given of proposed amendments to Part 65, Subpart G of the Commission's Rules, 47 CFR Part 65, Subpart G, as described in the Notice of Proposed Rulemaking.

List of Subjects in 47 CFR Part 65

Administrative practice and procedure; Communications common carriers; Reporting and recordkeeping requirements; Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-5826 Filed 3-11-96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 40

Federal Aviation Administration

14 CFR Part 121

Research and Special Programs Administration

49 CFR Part 199

Federal Railroad Administration

49 CFR Part 219

Federal Highway Administration

49 CFR Part 382

Federal Transit Administration

49 CFR Part 653 and 654

[OST Docket No. OST-96-1132, Notice 96-3]

RIN 2105-AC33

Amendment to Definition of "Substance Abuse Professional"

AGENCIES: Office of the Secretary, Federal Aviation Administration, Research and Special Programs Administration, Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Each of the Department's alcohol testing rules include a definition of a substance abuse professional. By this action, the Department is consolidating these definitions into its Department-wide testing procedures rule and adding to the definition substance abuse professionals certified by the International Certification Reciprocity Consortium.

DATES: Comments should be received by April 11, 1996. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. OST-96-1132, Department of Transportation, 400 7th Street, S.W., Room PL-400, Washington, D.C. 20590. Comments will be available for inspection at this address from 9:00 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Jim Swart, Program Analyst, Office of Drug Enforcement and Program Compliance, Room 10317 (202-366-3784); or Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Room 10424, (202-366-9306); 400 7th Street, S.W., Washington D.C. 20590.

SUPPLEMENTARY INFORMATION: The Omnibus Transportation Employees Testing Act of 1991 required that an opportunity for treatment be made available to covered employees. To implement this requirement in its alcohol and drug testing rules issued in February 1994, the Department of Transportation established the role of the "substance abuse professional" (SAP). The DOT rules require an employer to advise a covered employee, who engages in conduct prohibited under these rules, of the resources available for evaluation and treatment of substance abuse problems, including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs. The rules also provide for SAP evaluation to identify the assistance needed by employees with substance abuse problems. In many cases (e.g. the Federal Highway Administration and Federal Transit Administration rules), this process and the role of the SAP apply to drug testing as well as alcohol testing.

The primary safety objective of the DOT rules is to prevent, through deterrence and detection, alcohol and controlled substance users from performing transportation safety-sensitive functions. The SAP is responsible for several duties important to the evaluation, referral, and treatment of employees identified through breath and urinalysis testing as being positive for alcohol and/or controlled substance use, or who refuse to be tested, or who have violated other provisions of the DOT rules.

The SAP's fundamental responsibility is to provide a comprehensive face-to-face assessment and clinical evaluation to determine if the employee needs assistance resolving problems associated with alcohol use or prohibited drug use. If the employee is found to need assistance as a result of this evaluation, the SAP recommends a course of treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty. Assistance recommendations can include, but are not limited to: In-patient treatment, partial in-patient treatment, out-patient treatment, education programs, and aftercare. Upon the determination of the

best recommendation for assistance, the SAP will serve as a referral source to assist the employee's entry into an acceptable treatment or education program.

In general, the DOT rules prohibit a covered employee who has engaged in conduct prohibited by the rules from performing any safety-sensitive functions until meeting the conditions for returning to work, which include a SAP evaluation, demonstration of successful compliance with any required assistance program, and a successful return-to-duty test result (below 0.02 for alcohol test and/or a negative drug test). Therefore, the SAP follow-up evaluation is needed to determine if the employee demonstrates successful compliance with the original treatment recommendation. In addition, the SAP directs the employee's follow-up testing program.

The DOT rules define the SAP to be a licensed physician (Medical Doctor or Doctor of Osteopathy), a licensed or certified psychologist, a licensed or certified social worker, or a licensed or certified employee assistance professional. In addition, alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) Certification Commission, a national organization that imposes qualification standards for treatment of alcohol and drug related disorders, are included in the SAP definition. All must have knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders (the degrees and certificates alone do not confer this knowledge). The rules do not authorize individuals to be SAPs who meet only state certification criteria because qualifications vary greatly by state. In some states, certified counselors do not have the experience or training deemed necessary to implement the objectives of the rules. State-certified addiction counselors could have, of course, taken the NAADAC competency examination to receive certification.

The issue of who should be regarded as qualified to be a SAP was one of the most commented-upon issues in the rulemaking leading to the February 1994 rules (see 59 FR 7334-36; February 15, 1994). In the time since these rules were issued, various parties have continued to request that they be included within the definition of SAPs. In evaluating how to respond to such requests, the Department has taken the view that any expansion of the definition of SAPs should ensure that the qualifications of persons playing this important role not be diluted.

The International Certification Reciprocity Consortium (ICRC)/Alcohol & Other Drug Abuse (Suite 213, 3725 National Drive, Raleigh, North Carolina 27612) petitioned the DOT for inclusion of its certified counselors in the SAP definition. Upon receipt of the petition, the DOT began a thorough evaluation of the ICRC proposal, including information from ICRC related to counselor eligibility criteria, quality assurance procedures, codes of ethics, and certification and testing parameters. We also reviewed ICRC information on testing procedures, examination availability, and psychometrician standards.

The results of our evaluation support the conclusion that ICRC has rigorous standards in place and that their counselors warrant inclusion in the Department's SAP definition. Their program requirements for professional counselors and their testing and certification procedures (as well as test availability) are consistent with those of other groups already defined as qualified for participation. After careful review and evaluation of the ICRC petition, supporting documentation, and testing methodology the DOT has decided to propose including ICRC certified counselors in its SAP definition. ICRC-certified counselors must meet examination, experience, and other standards comparable to NAADAC-certified counselors, who are included in the existing SAP definition. The Department is aware that other organizations may be interested having their members qualify as SAPs. Such organizations should contact the Office of Drug Enforcement and Program Compliance (see "For Further Information Contact") for information on the Department's process for reviewing petitions for inclusion in the SAP definition.

Also, the Department has decided that, for convenience, we will propose consolidating SAP-related matters into Part 40, its Department-wide procedural regulation. Therefore, we propose to add a definition of SAP—including ICRC-certified counselors—to Part 40, while the SAP definitions in each of the operating administration rules would be removed. In a subsequent notice, the Department anticipates proposing to consolidate into Part 40 other material concerning the SAP's role in the return-to-duty process.

With this action, the SAP definition would change from

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or an addiction

counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

to:

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium / Alcohol & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

The last sentence would be reworded slightly to emphasize the Department's intent—incorporated in the February 1994 definition—that each SAP, regardless of the source of his or her credentials, personally have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Regulatory Process Matters

The proposed rule is considered to be a nonsignificant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034. It also is a nonsignificant rule for purposes of Executive Order 12866. The Department certifies, under the Regulatory Flexibility Act, that the NPRM, if adopted, would not have a significant economic effect on a substantial number of small entities. The NPRM would not impose any costs or burdens on regulated entities, serving merely to broaden the definition of service providers under the rule. The rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Department is soliciting comment for 30 days on this proposal, rather than a longer time, on two grounds. First, it is highly desirable to be able to issue a final rule promptly, in order to permit ICRC-certified individuals to perform as SAPs with as little delay as possible. This is particularly important in light of the fact that, beginning January 1, 1996, many additional transportation employers began to be covered by the drug and alcohol rules, and an expanded pool of SAPs will be useful to serve the expanded universe of regulated parties. Second, the Department believes that this is a

noncontroversial action, on which we anticipate little public comment.

OST

List of Subjects in 49 CFR Part 40

Drug testing, Alcohol testing, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, 49 CFR Part 40 is proposed to be amended as follows:

PART 40—[AMENDED]

1. The authority citation for Part 40 would continue to read as follows:

Authority: 49 U.S.C. 102,301,322; 49 U.S.C. app. 1301nt., app. 1434nt., app. 2717, app. 1618a.

§ 40.31 [Amended]

2. In § 40.3, after the definition of "specimen bottle," a definition of "substance abuse professional" is proposed to be added, to read as follows:

Substance abuse professional. A licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium /Alcohol & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Issued this 6th day of March, 1996, at Washington, D.C.
Federico Peña,
Secretary of Transportation.

FAA

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

For the reasons set out in the preamble, the Federal Aviation Administration proposes to amend 14 CFR part 121, as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 would continue to read as follows:

Authority: 49 U.S.C. 106(g), 400113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

Appendix I [Amended]

2. In Appendix I, Sec. II, the definition of "Substance abuse professional" is proposed to be removed.

Appendix J [Amended]

3. In Appendix J, Sec. I, subsection C, the definition of "Substance abuse professional" is proposed to be removed.

Issued in Washington, DC on March 6, 1996.

David R. Hinson,
Administrator, Federal Aviation Administration.

RSPA

List of Subjects in 49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Recordkeeping and reporting.

For the reasons stated in the preamble, RSPA proposes to amend 49 CFR Part 199 as follows:

PART 199—DRUG AND ALCOHOL TESTING

1. The authority for Part 199 would continue to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, and 60108; 49 CFR 1.53.

2. In 49 CFR 199.205, the definition of "Substance abuse professional" is proposed to be removed.

Issued in Washington, DC on March 6, 1996.

D.K. Sharma,
Administrator, Research and Special Programs Administration.

FRA

List of Subjects in 49 CFR Part 219

Alcohol and drug abuse, Railroad safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FRA proposes to amend 49 CFR Part 219, as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

1. The authority for part 219 would continue to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304; Pub. L. 103–272 (July 5, 1994); and 49 CFR 1.49(m).

§ 219.5 [Amended]

2. In § 219.5, the definition of "Substance abuse professional" is proposed to be removed.

Issued in Washington, DC on March 6, 1996.

Donald M. Itzkoff,
Deputy Administrator.

FHWA

List of Subjects in 49 CFR Part 382

Alcohol and drug abuse, Highway safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the FHWA proposes to amend 49 CFR part 382, as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

1. The authority for part 382 would continue to read as follows:

Authority: 49 U.S.C. 31306; 49 U.S.C. app. 31201 et. seq.; 49 U.S.C. 31502; 49 CFR 1.48.

§ 382.107 [Amended]

2. In § 382.107, the definition of "Substance abuse professional" is proposed to be removed.

Issued in Washington, DC on March 6, 1996.

Rodney Slater,
Administrator, Federal Highway Administration.

FTA

List of Subjects

49 CFR Part 653

Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 654

Alcohol testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set out in the preamble, the Federal Transit Administration proposes to amend 49 CFR Parts 653 and 654, as follows:

PART 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority for Part 653 would continue to read as follows:

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

§ 653.7 [Amended]

2. In § 653.7, the definition of "Substance abuse professional" is proposed to be removed.

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

1. The authority for Part 654 would continue to read as follows:

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

§ 654.7 [Amended]

2. In § 654.7, the definition of "Substance abuse professional" is proposed to be removed.

Issued in Washington, DC, on March 6, 1996.

Gordon J. Linton,
Administrator, Federal Transit Administration.

[FR Doc. 96-5848 Filed 3-11-96; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 960228053-6053-01; I.D. 022296E]

RIN 0648-A156

Groundfish of the Gulf of Alaska; Pollock Seasonal Allowances

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement Amendment 45 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This amendment proposes to allow NMFS to combine by regulatory amendment the third and fourth quarterly allowances for pollock in the Western and Central (W/C) Regulatory Areas into single seasonal allowances that would become available October 1 of each fishing year in the Western Regulatory Area and September 1 of each fishing year in the Central Regulatory Area. Changes to the final 1996 harvest specifications of GOA pollock are also proposed to reflect the proposed revised seasonal allowances. These measures are necessary to address management problems that have been identified by the fishing industry. They are intended to further the management objectives of the FMP.

DATES: Comments must be received by April 22, 1996.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries

Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668; Attn: Lori Gravel. Copies of Amendment 45 and the Environmental Assessment/Regulatory Impact Review (RIR) prepared for this Amendment 45 may be obtained from the North Pacific Fishery Management Council above address.

FOR FURTHER INFORMATION CONTACT: Kent Lind (907) 586-7228.

SUPPLEMENTARY INFORMATION:

The pollock fishery in the exclusive economic zone of the GOA is managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations found at 50 CFR 672. General regulations governing U.S. fisheries are also found at 50 CFR 620.

Background

This action proposes regulations to implement Amendment 45 to the FMP. If approved by NMFS, this amendment would remove the requirement that the total allowable catch (TAC) specified for pollock in the W/C Regulatory Areas be divided into four equal quarterly allowances and replace it with more flexible language that would require that the TACs specified for pollock in the W/C Regulatory Areas be divided into seasonal, rather than quarterly, allowances. The size, number, and timing of seasonal allowances would be established in regulation. The Council's objective in adopting Amendment 45 was to allow NMFS to combine by regulatory amendment the third and fourth quarterly allowances for pollock in the W/C Regulatory Areas into single seasonal allowances that would become available October 1 of each fishing year in the Western Regulatory Area and September 1 of each fishing year in the Central Regulatory Area.

Since 1990, the TACs specified for pollock in the W/C Regulatory Areas have been divided into four equal quarterly allowances, which become available January 1, June 1, July 1, and October 1. The quarterly allowance system was implemented as part of Amendment 19 to the FMP to limit excessive harvests of roe-bearing pollock. At the time, the Council also believed that a quarterly allowance system would provide a more stable year-round pollock fishery for GOA-based vessels and processors.

In November 1990, NMFS listed the Steller sea lion as threatened under the Endangered Species Act (ESA) and subsequently approved Amendment 25