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#### List of Subjects in 43 CFR Part 12

Administrative practice and procedure, Contract programs, Cooperative agreements, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Dated: December 13, 1999.

**Robert J. Lamb,**

*Acting Assistant Secretary—Policy, Management and Budget.*

#### PART 12—[AMENDED]

Accordingly, Part 12 of title 43 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 12 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. 252a, 701 *et seq.*; Pub. L. 104–256, 110 Stat. 1396; sec. 501, Pub. L. 105–62, 111 Stat. 1338; sec. 503, Pub. L. 105–62, 111 Stat. 1339; sec. 303, Pub. L. 105–83, 111 Stat. 1589; sec. 307, Pub. L. 105–83, 111 Stat. 1590; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., 215; E.O. 12689, 3 CFR, 1989 Comp., p. 235; E.O. 12731, 3 CFR, 1990 Comp., p. 306; E.O. 13043, 62 FR 19217; 3 CFR, 1997 Comp., p. 195; OMB Circular A–102; OMB Circular A–110; and OMB Circular A–133.

#### Subpart A—Administrative and Audit Requirements and Cost Principles for Assistance Programs

2. Section 12.2 is amended by adding paragraph (e) to read as follows:

##### § 12.2 What policies are financial assistance awards and subawards in the form of grants and cooperative agreements subject to?

\* \* \* \* \*

(e)(1) Executive Order 13043, “Increasing Seat Belt Use in the United States,” dated April 16, 1997, do?

(i) If you are a Federal grantee:

You are encouraged to—

(A) Adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally-owned vehicles.

(B) Conduct education, awareness, and other appropriate programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.

(2) When does the policy apply?

(i) If a grant or cooperative agreement is being awarded by the bureau/office of the Department—The policy applies.

(ii) If the recipient awards a grant or cooperative agreement to a subrecipient—The policy applies.

(3) What term and condition will be incorporated into the grant/cooperative agreement or sub-award?

Provision

Recipients of grants/cooperative agreements and/or sub-awards are encouraged to adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. These measures include, but are not limited to, conducting education, awareness, and other appropriate programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.

End of Provision.

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#### DEPARTMENT OF TRANSPORTATION

##### Federal Railroad Administration

##### 49 CFR Part 219

[Docket No. RSOR–6; Notice No. 47]

RIN 2130–AA81

##### Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2000

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Notice of Determination.

**SUMMARY:** Using data from Management Information System annual reports, FRA has determined that the 1998 rail industry random testing positive rate was .82 percent for drugs and .21 percent for alcohol. Since the industry-wide random drug testing positive rate continues to be below 1.0 percent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2000 through December 31, 2000 will remain at 25 percent of covered railroad employees. Since the random alcohol testing violation rate has remained below .5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will be lowered to 10 percent of covered railroad employees for the period January 1, 2000 through December 31, 2000.

**DATES:** This notice is effective December 27, 1999.

**FOR FURTHER INFORMATION CONTACT:** Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, N.W., Washington, D.C. 20005, (Telephone: (202) 493–6313).

#### SUPPLEMENTARY INFORMATION:

##### Administrator’s Determination of 2000 Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry’s overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA’s Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (see 49 CFR 602 and 608).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates.) FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent because 1992 and 1993 industry drug testing data indicated a random drug testing positive rate below 1.0 percent; since then FRA has continued to set the minimum random drug testing rate at 25 percent as the industry positive rate has consistently remained below 1.0 percent. In this notice, FRA announces that the minimum random drug testing rate will stay at 25 percent of covered railroad employees for the period January 1, 2000 through December 31, 2000, since the industry random drug testing positive rate for 1998 was .82 percent.

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than .5 percent for two calendar years while testing at a higher rate. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. If the industry-wide violation rate is less than 1.0 percent but greater than .5 percent, the rate will remain at 25 percent.

Random alcohol testing was fully implemented at a 25 percent minimum

testing rate on January 1, 1996. In 1998, the industry-wide violation rate for alcohol was .21 percent. Since the industry-wide violation rate for alcohol has remained below .5 percent for the last two years, FRA is lowering the minimum random alcohol testing rate to 10 percent of covered railroad employees for the period January 1, 2000 through December 31, 2000.

This notice sets the minimum random testing rates required next year. Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, D.C. on December 20, 1999.

**Jolene M. Molitoris,**

*Federal Railroad Administrator.*

[FR Doc. 99-33401 Filed 12-23-99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 991221344-9344-01; I.D. 121099A]

RIN 0648-AN44

#### Western Pacific Pelagic Fisheries; Hawaii-based Pelagic Longline Area Closure

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

**ACTION:** Emergency rule; notice of closure; request for comments.

**SUMMARY:** NMFS issues an emergency rule to prohibit vessels registered for use under a Hawaii longline limited access permit from fishing with longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long. NMFS is also prohibiting vessels registered for use with receiving vessel permits from receiving Pacific pelagic management unit species harvested with longline gear while those receiving vessels are in the closed area. No vessel may land or transship, shoreward of the outer boundary of the EEZ, pelagic fish harvested by longline gear in the closed area. The closure is an interim measure in response to the Order Setting Terms of Injunction issued by the U.S. District Court, District of Hawaii, dated November 23, 1999. The intended effect is to implement the court-ordered closure and reduce adverse impacts to sea turtles by curtailing activities of the Hawaiian longline fishery while an

environmental impact statement (EIS) is being prepared.

**DATES:** This rule is effective 12:01 a.m., local time, December 23, 1999, through 12:01 a.m., local time, June 26, 2000. Comments must be received no later than 5:00 p.m., local time, on February 10, 2000.

**ADDRESSES:** Written comments on this action must be mailed to Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700; or faxed to 808-973-2941. Comments will not be accepted if submitted via e-mail or internet. Copies of the environmental assessment prepared for this action may be obtained from Alvin Katekaru or Marilyn Luipold, PIAO.

**FOR FURTHER INFORMATION CONTACT:** Alvin Katekaru or Marilyn Luipold, 808-973-2937.

**SUPPLEMENTARY INFORMATION:** The Hawaii-based longline fishery is managed under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). The FMP was prepared by the Western Pacific Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 660.

On October 6, 1999, NMFS announced its intent to prepare an EIS on management of the fishery for pelagic species in waters of the exclusive economic zone (EEZ) in the Western Pacific Region. Additionally, NMFS announced its intention to prepare an environmental assessment (EA) for that fishery. The scope of the EA includes all activities related to the conduct of the fishery for the 2-year period NMFS anticipates is necessary to prepare the EIS. Both the EIS and the EA examine the impacts of pelagics harvest on, among other things, sea turtles and seabirds.

On November 23, 1999, the U.S. District Court, District of Hawaii, ordered NMFS to prohibit, within 30 days of the date of entry of the Order, "all activities of the Hawaii longline fishery authorized by the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, as amended, within the area encompassed and bounded by the following description: north of 28° N. and between 168° W. and 150° W." To comply with the Court Order, NMFS is implementing the Court-ordered closure by emergency action. This action closes an area to longline fishing that was the source of approximately 30 percent of

the revenue received from swordfish landings and approximately 13 percent of the total revenue from all species landed by the Hawaii-based longline fleet.

Accordingly, NMFS prohibits all vessels registered for use under a Hawaii longline limited access permit from fishing with longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long. NMFS also prohibits vessels registered for use with receiving vessel permits (issued under the regulations at 50 CFR 660.21(c)) from receiving Pacific pelagic management unit species harvested with longline gear while those receiving vessels are in the closed area. No vessel may land or transship, shoreward of the outer boundary of the EEZ, pelagic fish harvested by longline gear in the closed area.

The closure is being implemented by emergency action under the authority of section 305(c) of the Magnuson-Stevens Act. Under 305(c)(3), the emergency regulation may remain in effect for not more than 180 days after the date of publication, and may be extended for one additional period of not more than 180 days. The emergency regulation may also be terminated at an earlier date.

#### Criteria for Issuing an Emergency Rule

This emergency rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), because the emergency situation results from recent, unforeseen events, or recently discovered circumstances. Also, it realizes immediate benefits from the emergency rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

#### *Recent, Unforeseen Events or Recently Discovered Circumstances*

The Court-ordered closure was issued November 23, 1999, and allows 30 days for implementation. Emergency action is necessary to comply with the Order and implement the closure by December 23, 1999. To be effective by then, an emergency rule is needed.

#### Immediate Benefits

This rule is not likely to have a significant effect on tuna harvests. Although there are many variables that may confound accurate predictions about the effects upon different sea turtle species, NMFS anticipates the closure will have a positive benefit on sea turtles in general.