

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 81**

[VA37-1-6812a; FRL-5170-9]

Designation of Areas for Air Quality Planning Purposes; Virginia; Withdrawal of Final Rule Pertaining to the Clean Air Act Promulgation of Reclassification of the Hampton Roads Ozone Nonattainment Area in Virginia and Attainment Determinations**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Withdrawal of direct final rule.

SUMMARY: On January 17, 1995, EPA published a final rule to reclassify the Norfolk-Virginia Beach-Newport News area (Hampton Roads) in Virginia from marginal to moderate nonattainment for ozone. The January 17, 1995 document also set forth the method that EPA will use henceforth to determine if areas have attained an air quality standard. These actions were published without prior proposal because EPA anticipated no adverse comment. Because EPA received adverse comments on these actions, EPA is withdrawing the January 17, 1995 final rule actions pertaining to the Hampton Roads reclassification and EPA's method to determine if areas attained an air quality standard.

EFFECTIVE DATE: March 13, 1995.**FOR FURTHER INFORMATION CONTACT:** Maria A. Pino, (215) 597-9337.

SUPPLEMENTARY INFORMATION: On January 17, 1995, EPA published a final rule to reclassify the Norfolk-Virginia Beach-Newport News area (Hampton Roads) in Virginia from marginal to moderate nonattainment for ozone (60 FR 3349), because the area failed to meet its November 15, 1993 attainment date. The action was based on air quality monitoring data for ozone. The January 17, 1995 document also set forth the method that EPA will use henceforth to determine if areas have attained an air quality standard. EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as non-controversial and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30 day comment period (60 FR 3349). At the same time, EPA announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register** (60 FR 3366). By publishing a document announcing withdrawal of the final rulemaking action, this action

would be withdrawn. EPA received adverse comment within the prescribed comment period. Therefore, EPA is withdrawing the January 17, 1995 final rulemaking actions pertaining to the Hampton Roads reclassification and EPA's method to determine if areas attained an air quality standard. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

The January 17, 1995 action also determined that a number of marginal ozone nonattainment in the states of Delaware, Pennsylvania, New Jersey, Ohio, and West Virginia have ambient air monitoring data that meets the ozone air quality standard. Those determinations were based on monitored air quality readings for ozone during the years 1991-1994. The January 17, 1995 action was not a redesignation action for these marginal areas for which air quality monitoring data indicates attainment of the standard. The Clean Air Act requires that a separate redesignation request be submitted by the appropriate states to EPA. These determinations are not affected by this withdrawal document. This withdrawal document only pertains to the final rulemaking actions on the Hampton Roads reclassification and EPA's method to determine if areas have attained an air quality standard.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: March 1, 1995.

Stanley Laskowski,*Acting Regional Administrator.*

For the reasons set out in the preamble, 40 CFR part 81 is amended by withdrawing the final rule published on January 17, 1995 at 60 FR 3349.

[FR Doc. 95-6110 Filed 3-10-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 81

[WI44-02-6881; FRL-5168-4]

Designation of Areas for Air Quality Planning Purposes; Wisconsin; Redesignation of Oshkosh, Wisconsin, to Attainment for Carbon Monoxide; Correction**AGENCY:** United States Environmental Protection Agency (USEPA).**ACTION:** Final rule, correction.

SUMMARY: On August 17, 1994 the USEPA published a final rule approving the redesignation Oshkosh, Wisconsin to attainment status for carbon

monoxide (59 FR 42168). The supplementary information to the final rule included several typographical errors, and the final rule incorrectly listed the date the rule was to take effect. This correction clarifies the intent of the supplementary information and provides the correct effective date of October 17, 1994.

The USEPA regrets any inconvenience caused by these errors.

EFFECTIVE DATE: This correction is effective March 13, 1995.**FOR FURTHER INFORMATION CONTACT:**

Megan Beardsley, Environmental Scientist, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-0669.

SUPPLEMENTARY INFORMATION:**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 10, 1995.

David A. Ullrich,*Acting Regional Administrator.***Correction of Publication**

Accordingly, the final rule published on, August 17, 1994 at 59 FR 42168 FR Doc. 94-20172, is corrected as follows:

1. On page 42169 of the final rule, at the top of the first column, the "Action" heading is incorrectly labelled as "C;" the correct label is "B." In the same column, the "Miscellaneous" heading is labelled as "IV;" the correct label is "III." Similarly, in column two, the "Petitions for Judicial Review," heading is labelled as "D;" the correct label is "C."

§ 81.350 [Corrected]

2. On page 42169, in § 81.350, in the Wisconsin carbon monoxide table, in the entry for "Winnebago County" the designation date in column 2 and the classification date in column 4 are corrected to read "October 17, 1994".

[FR Doc. 95-5659 Filed 3-10-95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****49 CFR Parts 382 and 391**

[FHWA Docket No. MC-93-2]

RIN 2125-AD47

Controlled Substances Testing; Recordkeeping and Reporting Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the controlled substances and alcohol testing regulations to require a motor carrier to prepare an annual summary of alcohol and controlled substances test results only upon the demand of an FHWA representative, either as part of an inspection, investigation, or special study; or as part of the anti-drug management information system (MIS). The FHWA will use the data to conduct investigations, to analyze its current approach to deterring and detecting alcohol and controlled substances misuse within the motor carrier industry, and to modify program goals, as appropriate.

EFFECTIVE DATE: March 13, 1995.

FOR FURTHER INFORMATION CONTACT: For information regarding program issues: Mr. Ronald Finn, Office of Motor Carrier Standards, (202) 366-0647, and for information regarding legal issues: Mr. David Sett, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Background**

The FHWA published a final rule in the **Federal Register** on November 21, 1988, requiring motor carriers to test commercial motor vehicle drivers for the use of controlled substances (53 FR 47134). The rule also required all carriers to compile a report containing certain information about their current controlled substances testing program. The FHWA published a final rule on December 23, 1993, under FHWA Docket No. MC-93-2, which amended 49 CFR 391.87(h) to modify the controlled substances testing information required to be maintained. The final rule also required that the report be submitted to the FHWA, if requested, as part of the FHWA anti-

drug management information system (MIS) (58 FR 68220). On February 15, 1994, the FHWA published a final rule under FHWA Docket Nos. MC-116, MC-92-19, and MC-92-23, which amended 49 CFR Part 382 to apply these same MIS requirements to employers subject to the new controlled substances and alcohol testing program mandated by the Omnibus Transportation Employee Testing Act of 1991 (59 FR 7484).

On January 21, 1994, the American Trucking Associations, Inc. (ATA), filed a petition under 49 CFR 389.35 for reconsideration of the December 23, 1993, rulemaking. The ATA requested that the requirement that an annual summary be prepared and maintained by all employers be limited to those relatively few employers who have been selected to submit the annual summaries to the FHWA MIS. On February 3, 1994, the American Movers Conference filed a letter in support of the ATA's petition. Because the MIS reporting provisions in the December 23, 1993, rule are the same as those appearing in the new rules for drug and alcohol testing under 49 CFR Part 382, the FHWA's response to the petition applies in the same manner to both 49 CFR Part 382 and § 391.87(h).

The ATA's petition has been granted in part and denied in part. The FHWA's response to the petition is reprinted here as appendix A but will not appear in the Code of Federal Regulations.

Consistent with the response to the petition, the controlled substances and alcohol testing regulations at 49 CFR Parts 382 and 391 are amended to require a motor carrier to prepare an annual summary only upon the demand of an FHWA representative, either as part of an inspection, investigation or special study; or as part of the MIS. The new requirements will apply as of March 13, 1995 and begin with the annual summaries for the year 1994.

Also included in this document as appendix B are MC-154 and MC-155 for use in filing reports with the FHWA MIS. The MIS forms were printed as an appendix to the February 15, 1994, final rule. The "EZ" form was inadvertently published without part D, Alcohol Testing Information. The MIS forms are being reprinted here in their entirety and will not appear in the Code of Federal Regulations. They are meant merely as examples of the forms that will be sent to employers who have been selected to submit reports to be used in the MIS. For employers who have not been selected to submit MIS reports, but who do compile annual summaries, any form may be used. This includes electronic storage as long as all

the required data elements are available in paper form.

The Office of the Secretary published a final rule on August 19, 1994 (59 FR 42996), changing 49 CFR 40.29(g)(6) to require laboratories to submit quarterly instead of monthly statistical summary reports to employers. The FHWA is changing the reference in 49 CFR 391.81(h)(1) from monthly laboratory summaries to quarterly laboratory summaries in order to be consistent with 49 CFR Part 40.

Rulemaking Analyses and Notices

The FHWA finds that further notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) inasmuch as the annual summary issue has already been the subject of notice-and-comment rulemakings (RIN 2125-AC85, 2125-AC81, and 2125-AD06), including three December 15, 1992, notices of proposed rulemaking (57 FR 59516, 59539, and 59567). In addition, the FHWA believes that further notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation. In light of the earlier opportunities to comment on this subject, and the comments actually received on this issue, the FHWA does not anticipate that providing an additional comment period would result in the receipt of useful information.

The FHWA also believes that this final rule is exempt from the 30-day delayed effective date requirement of the Administrative Procedure Act under 5 U.S.C. 553(d)(1) because it "grants or recognizes an exemption or relieves a restriction." This final rule removes the requirement that all employers prepare an annual summary and instead requires only those employers directed by the FHWA to submit such reports, either as part of an investigation or the MIS, to prepare them. Therefore, the FHWA finds that good cause exists to proceed directly to a final rule.

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is neither a significant regulatory action under Executive Order 12866 nor significant under the Department of Transportation's regulatory policies and procedures. In this final rule, the FHWA removes the requirement that all employers prepare an annual summary. Instead, only those employers required to submit annual summaries or make them available in safety inspections must prepare them. It is anticipated that the economic impact of this rulemaking will not be substantial although this

action will reduce employers' costs of complying with the FHWA controlled substances and alcohol use and testing regulations. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the agency has evaluated the effects of this rulemaking on small entities. In this final rule only those employers required to submit annual summaries or make them available in safety inspections must prepare them by March 15 of the year following the date that a final test result determination is made. Based on this evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a separate federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements in this rule are approved until March 31, 1997, by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and have been assigned OMB control number 2125-0543.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and

October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 382 and 391

Alcohol concentration, Alcohol testing, Controlled substances testing, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: March 7, 1995.

Rodney E. Slater,
Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subchapter B, chapter III, parts 382 and 391 as set forth below.

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.* and 31502; 49 CFR 1.48.

2. Section 382.401 is amended by revising paragraph (b)(1)(vi) to read as follows:

§ 382.401 Retention of Records.

* * * * *

(b) * * *

(1) * * *

(vi) A copy of each annual calendar year summary required to be completed pursuant to § 382.403.

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3. Section 382.403 is amended by revising paragraph (a) to read as follows:

§ 382.403 Reporting of Results in a Management Information System.

(a) An employer shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

* * * * *

PART 391—QUALIFICATION OF DRIVERS

4. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 31136, and 31502; and 49 CFR 1.48.

§ 391.87 [Amended]

5. In 49 CFR 391.87(h)(1) remove the word "monthly" and add in its place the word "quarterly."

6. Section 391.87 is amended by revising paragraph (h)(3) and adding paragraph (h)(4) to read as follows:

§ 391.87 Notification of test results and recordkeeping.

* * * * *

(h) * * *

(3) A motor carrier shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the motor carrier or any of its drivers. The information shall be made available for inspection at the motor carrier's principal place of business within two business days of the request.

(4) If, during the month of January, a motor carrier is provided with forms by the Federal Highway Administration on which to report the motor carrier's annual calendar year summary information, the motor carrier shall complete the forms and submit them to the Federal Highway Administration by March 15 of that year. The motor carrier shall ensure that the annual summary report is accurate and received by March 15 at the location that the Federal Highway Administration specifies in its request. The report shall be in the form and manner prescribed by the Federal Highway Administration in its request. When the report is submitted to the Federal Highway Administration by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each motor carrier shall ensure the accuracy and timeliness of each report submitted by the motor carrier or a consortium.

Note: The following appendixes will not appear in the Code of Federal Regulations.

Appendix A to Preamble—Response to Petition for Reconsideration

Before the Federal Highway Administration

Decision

In the matter of: American Trucking Associations, Inc., Petitioner.

Petition for Reconsideration No. 94-11

On January 21, 1994, the American Trucking Associations, Inc. (ATA) filed a timely petition under 49 CFR § 389.35 for reconsideration of a Federal Highway Administration (FHWA) rulemaking: Controlled Substances Testing; Recordkeeping and Reporting Requirements;

Final Rule. 58 Fed. Reg. 68220 (1993). The ATA requests that the rule's requirement that an annual summary be prepared and maintained by motor carriers be limited to those carriers which have been selected to submit the summaries to the FHWA. Attached to the letter is a copy of comments which the ATA submitted to the rulemaking docket (MC-93-2). On February 3, 1994, the American Movers Conference filed a letter in support of the ATA's petition. The motion is considered as a petition for reconsideration of a rule under 49 CFR 389.35. For the reasons set forth below, the petition is granted in part and denied in part.

The rule establishes a management information system (MIS) for FHWA drug testing regulations. Certain information relating to a carrier's drug testing program (e.g., number of tests administered and number of tests with verified positive results) is required to be compiled and maintained on an annual basis as part of the MIS. Prior to the December 23, 1993, rulemaking, the FHWA already required substantially the same information to be compiled and maintained. 49 CFR 391.87(h). In addition to deleting some items of information and adding others, the subject rulemaking amended § 391.87(h) to require that annual summaries, required to be maintained by all carriers, be submitted, in the form provided in the rulemaking, to the FHWA by a relatively small number of selected carriers each year for statistical purposes.

The MIS provisions in the subject rulemaking are similar to those appearing in the new rules for drug and alcohol testing. 49 CFR Part 382. Therefore, any discussion or amendment of § 391.87(h) pursuant to the petition applies in the same manner to Part 382.

The ATA petitions the Administrator to reconsider the requirement that all carriers be required to complete annual summary forms. The ATA recommends that only carriers which have been selected to submit annual summaries to the FHWA be required to complete them.

The ATA states that it "supports reasonable recordkeeping requirements * * * [but] opposes recordkeeping requirements which are unduly complex and exceed legitimate needs for monitoring compliance." The ATA argues that requiring all carriers to complete annual summaries is unreasonable and constitutes a "severe paperwork burden" without commensurate safety benefits.

As mentioned above, the rulemaking made no significant substantive changes to the information already required to be maintained and prepared in § 391.87. Annual summaries have been required since the inception of the drug testing program in 1989.

The rule, therefore, does not increase, but only continues, any data maintenance burden on carriers.

The rule also does not significantly increase the procedural burden. Contrary to the assumption in the petition, the rule does not require all motor carriers to complete annual summary forms. Only those carriers which have been selected to submit data are required to put that data on a form, and mail

it to the FHWA. Thus, the ATA's cost estimate, based on FHWA's computation of time to complete one form, of \$1.3 to \$5.4 million for 270,000 carriers to complete the forms is not accurate. In actuality, only a fraction of those 270,000 carriers will be required to complete and submit a form in any given year.

The rule does continue the requirement of preparing and maintaining certain testing information. For the vast majority of carriers, this means that the information, which consists of yearly totals in various categories, must be culled from the carrier's files and kept in one place. No forms need to be completed. Indeed, the form of the summary is not specified at all. The carrier can choose the form best suited to its operations, including computer technology. § 390.31. Such electronic data storage and retrieval systems should facilitate the generation of the summaries.

Though an assessment of the burden of compliance with the annual summary requirement should not properly include the cost of form preparation, it must be acknowledged that a cost is incurred simply in the compiling and maintaining of the summary information. Though difficult to quantify, the cost, added to an already costly drug testing program, may be significant, given the large number of carriers subject to the rules. The addition of alcohol testing to drug testing, along with the inclusion of intrastate with interstate carriers subject to testing, will only increase the overall cost of data maintenance. Given these costs, the question becomes, can the regulatory benefit to the FHWA in the context of the program as a whole justify the imposition of the addition costs associated with the annual summary?

The ATA argues that a summary of a year's activity is of no value in determining compliance, because drug testing requirements are driver and trip specific. Even the rate at which the employer is actually randomly testing its drivers cannot be determined from review of an annual summary, the ATA asserts, because "the summary provides only the number of covered employees, while the random selection criteria is based on driver positions."

It is correct that an employer must test its employees at a given rate based on the number of its driving positions during the course of the year, and that the annual summary includes a different number—the total number of drivers subject to testing during the year. It is incorrect, however, that the annual summary is of no use in determining a carrier's compliance with the random testing rate. In most, but not all, instances, the number of random tests performed will appear on the annual summary, which is part of the rate equation. No other information on the annual summary can be used directly to enforce compliance with drug testing requirements, however.

The annual summary also has value in indirect enforcement of drug testing requirements. Nowhere else is information on a carrier's drug testing program compiled in one location. Drug testing data is usually maintained in individual driver qualification

files. The annual summary gives an overall picture of the drug testing program, and may alert FHWA representatives to irregularities which can be further investigated through other employer records.

A collateral benefit lies in the picture which an annual summary presents a carrier of its program as a whole. With testing information scattered about in individual files, and perhaps in different locations, it may be difficult for a carrier to determine the overall effectiveness of its program. Inconsistencies and flaws which might otherwise be missed may be highlighted by the annual summary, allowing the carrier to make any changes to the program necessary to ensure compliance. Yet, mandating completion of an annual summary is a one size fits all management approach. Many carriers may have alternative, and less costly, methods of accomplishing the same oversight.

In summary, the annual summary offers limited benefits to the FHWA in direct enforcement of testing requirements, and perhaps greater benefits in indirect enforcement. It may be helpful, though not essential, for an FHWA inspector to have the information available. On the other hand, these marginal benefits are never realized in regard to the vast majority of carriers neither asked to submit the summaries they labored to complete, nor made the subject of a compliance audit.

It is not reasonable or cost effective in terms of enforcement, therefore, to require all carriers to complete an annual summary by March 15 of each year, when only a mere fraction of those summaries are ever reviewed by FHWA officials. Many prudent carriers may very well wish to prepare and maintain a summary each year as a management aid or in anticipation of an inspection or submission request, but they should not be required to do so.

For carriers that are inspected, however, it may be beneficial for an FHWA inspector to review an annual summary. Therefore, the rule will be amended to require a carrier to produce an annual summary only upon the demand of an FHWA representative, either as part of an inspection, investigation or special study; or for statistical purposes. Thus, the ATA's petition to restrict the summary requirement to statistical purposes is denied, though the instances in which the summaries must be completed is being greatly reduced consistent with the petition.

This scheme will operate well with the requirements in the new alcohol and drug testing regulations to be implemented on January 1, 1995, and 1996. The new regulations, Part 382, contain an MIS for drug and alcohol testing similar to that in Part 391 for drug testing. Part 391 will sunset as Part 382 testing is implemented. Both Parts 382 and 391 now provide for prior notice. Sections 382.401(d) and 391.87(h)(3) allow the employer to make all records required to be maintained in Part 382 or § 391.87 "available at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Highway Administration." Upon request, the carrier would gather the records together, along with

the most current annual summary, and present them to the FHWA representative.

Wherefore, the petition of the American Trucking Associations, Inc. for reconsideration of the FHWA final rule at 58 Fed. Reg. 68220 (January 21, 1994.) is hereby denied in part and granted in part consistent with the foregoing. The FHWA will publish a final rule accordingly.

Dated: March 7, 1995.

Rodney E. Slater,
Federal Highway Administrator.

Appendix B to Preamble—Information Systems Data Collection Forms

Drug and Alcohol Testing Management Information System (MIS) Data Collection Form

Instructions

The following instructions are to be used as a guide for completing the drug and alcohol testing information sought by the Federal Highway Administration (FHWA) and the U.S. Department of Transportation (DOT) in the Drug and Alcohol Testing MIS Data Collection Form. These instructions explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-iv (for drug results) and v-vi (for alcohol results) as an example to facilitate the process of completing the form correctly.

This reporting form is comprised of four sections. Collectively, these sections address the data elements required in the FHWA and the DOT drug and alcohol testing regulations. The four sections, the page number for the instructions, and the page location on the reporting form are shown below.

Section	Instructions page	Reporting form page
A. Motor Carrier Employer Information.	i	1
B. Covered Employees.	i	1
C. Drug Testing Information.	ii-iv	2
D. Alcohol Testing Information.	iv-vi	3

Page 1—MOTOR CARRIER EMPLOYER INFORMATION (Section A) requires the company name for which the report is completed, a current address, the U.S. DOT number, and the ICC number (if applicable). A signature, date, and current telephone (including the area code) must be entered by the person certifying to the correctness and completeness of the report.

Page 1—COVERED EMPLOYEES (Section B) requires a count for each driver that must be tested under DOT regulations. There is only one category of covered employees for FHWA regulated employers, and that is "Drivers". The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the calendar year being reported. An employee who is hired twice or more in the reported year must be counted as a single employee.

Additional information must be completed if your company employs personnel who perform duties covered by the drug and alcohol rules of more than one DOT operating administration. NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION, requires that you identify the number of drivers, who are covered employees, under the appropriate additional operating administration(s). The employees covered by more than one DOT operating administration must be counted under *all* appropriate operating administrations.

Page 2—DRUG TESTING INFORMATION (Section C) requires information for drug testing by category of testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in a covered position only (i.e. "Drivers"). Each part of this table must be completed for each category of testing. These numbers do not include refusals for testing.

Section C is used to summarize the drug testing results for applicants and covered employees. There are seven categories of testing to be completed. The first part of the table is where you enter the data on pre-employment testing. The following six parts are for entering drug testing data on random, post-accident/non-fatal, post-accident/fatal, reasonable suspicion, return to duty, and follow-up testing, respectively. Items necessary to complete these tables include:

- (1) The number of specimens collected in each testing category;
- (2) The number of specimens tested which were verified negative and verified positive for any drug(s); and
- (3) Individual counts of those specimens which were verified positive for each of the five drugs.

Do *not* include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part, PRE-EMPLOYMENT TESTING

Information on actions taken with those persons testing positive is required at the end of Section C. Specific instructions for providing this latter information are given after the instructions for completing the table in Section C.

Three types of information are necessary to complete the left side of this table. The first column ("NUMBER OF SPECIMENS COLLECTED"), requires a count for all collected specimens. It *should not* include refusals to test. The second column ("NUMBER OF SPECIMENS VERIFIED NEGATIVE"), requires a count for all completed tests that were verified negative by your Medical Review Officer (MRO).

The third column ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS"), refers to the number of specimens provided by job applicants or employees that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of the table ("NUMBER OF SPECIMENS VERIFIED

POSITIVE FOR EACH TYPE OF DRUG"), requires counts of positive tests for each of the five drugs for which tests were completed (i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines). The number of positive specimens for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results should be included once in each of the appropriate columns (marijuana *and* cocaine).

A sample table is provided on page iii with example numbers.

Page 2—Below the table for drug testing information is a box ("Number of persons denied a position as a covered employee following a verified positive drug test"). This is a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

Page 2—Also following the table that summarizes DRUG TESTING INFORMATION, you must provide counts for employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule. This information should be available from the personnel office and/or drug program manager.

Sample Applicant Test Results Table

The following example is for Section C, DRUG TESTING INFORMATION, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses "Pre-Employment" testing to illustrate the correct procedures for completing the form.

A. Urine specimens were collected for 157 job applicants for driver positions during the reporting year. This information is entered in the first column of the table in the row marked "PRE-EMPLOYMENT".

B. The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens for driver positions were negative (i.e., no drugs were detected). Enter this information in the second column of the table in the row marked "PRE-EMPLOYMENT".

C. The MRO for your company reported that 4 of those 157 specimens from applicants for driver positions were positive (i.e., a drug or drugs were detected). Enter this information in the third column of the table in the row marked "PRE-EMPLOYMENT".

D. With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana.
#2	Amphetamines.
#3	Marijuana and Cocaine (Multi-drug specimen).
#4	Marijuana.

Type of test	Number of specimens collected	Number of specimens verified negative	Number of specimens verified positive for one or more of the five drugs	Number of specimens verified positive for each type of drug				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Pre-employment	157	153	4	3	1	0	0	1

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Since two different drugs were detected in specimen #3 (multi-drug), entries are made in both the marijuana and the cocaine columns for this specimen. Information on multi-drug specimens must also be entered in the table, SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG.

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all categories of testing in the table in Section C.

Page 2—SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG requires information on specimens that contained more than one drug. First, indicate the NUMBER OF VERIFIED POSITIVES. Then, specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 specimens, then you would write "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 specimens, then you would write "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 2—EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires a count of the NUMBER OF COVERED EMPLOYEES who refused to submit to a random or non-random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required by FHWA regulation.

Page 2—DRUG TRAINING/EDUCATION requires information on the number of

supervisory personnel who have received the required drug training during the current reporting period.

Page 3—ALCOHOL TESTING INFORMATION (Section D) requires information for alcohol testing by category of testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in covered positions only (i.e., "Drivers"). Each part of this table must be completed for each category of testing. These numbers do not include refusals for testing. A sample table is provided on page vi with example numbers.

Four types of information are necessary to complete this table. The first column ("NUMBER OF SCREENING TESTS"), requires a count of all screening alcohol tests performed. It should not include refusals to test. The second column ("NUMBER OF CONFIRMATION TESTS") requires a count of all confirmation alcohol tests performed.

The third column ("NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04"), refers to the number of test results equal to or greater than 0.02, but less than 0.04.

The fourth column ("NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04"), refers to the number of specimens with a result equal to or greater than 0.04. Note: For return to duty testing, a confirmation test result equal to or greater than 0.02 is a violation of the alcohol rule. Therefore, if the number of results equal to or greater than 0.04 is unknown, you may report all results in the third column of the table.

Page 3—Below the table for alcohol testing information is a box ("Number of persons denied a position as a covered employee following an alcohol test indicating an alcohol concentration of 0.04 or greater"). This is a count of those persons who were not placed in a covered position because their alcohol test indicated an alcohol concentration of 0.04 or greater.

Page 3—Also following the table that summarizes ALCOHOL TESTING

INFORMATION, you must provide a count of the "Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations)". This information should be available from the personnel office and/or drug and alcohol program manager.

Sample Applicant Test Results Table

The following example is for ALCOHOL TESTING INFORMATION, which summarizes pre-employment testing results. The procedures detailed here also apply to the other reasons for testing in the table which require you to summarize testing results for employees. This example will use "Pre-Employment" testing to illustrate the procedures for completing the form.

A. Screening tests were performed on 157 job applicants for driver positions during the reporting year. This information is entered in the first blank column of the table in the row marked "PRE-EMPLOYMENT".

B. Confirmation tests were necessary for 6 of the 157 applicants for driver positions. Enter this information in the second blank column of the table in the row marked "PRE-EMPLOYMENT". The confirmation test results for these 6 applicants were the following:

Applicant	Confirmation result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C. The confirmation test results for 2 of the applicants for driver positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the third blank column of the table in the row marked "PRE-EMPLOYMENT".

D. The confirmation test results for 3 of the applicants for driver positions were equal to or greater than 0.04. Enter this information in the fourth blank column of the table in the row marked "PRE-EMPLOYMENT".

Type of test	Number of screening tests	Number of confirmation tests	Number of confirmation test results equal to or greater than 0.02, but less than 0.04	Number of confirmation test results equal to or greater than 0.04
Pre-employment	157	6	2	3

Number of persons denied a position as a covered employee following a verified positive drug test:

Number of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule:

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG

Number of verified positives	Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Employees who refused to submit to a drug test					Number
Covered employees who refused to submit to a random drug test required under the FHWA regulation					
Covered employees who refused to submit to a non-random drug test required under the FHWA regulation					
Drug training/education	Number				
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FHWA drug testing regulations:					

D. ALCOHOL TESTING INFORMATION

Type of Test	Number of screening tests	Number of confirmation tests	Number of confirmation test results equal to or greater than 0.02, but less than 0.04	Number of confirmation test results equal to or greater than 0.04
Pre-employment				
Random				
Post-accident/non-fatal				
Post-accident/fatal				
Reasonable suspicion				
Return to duty				
Follow-up				

Number of persons denied a position as a covered employee following an alcohol test indicating an alcohol concentration of 0.04 or greater:

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations):

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION

Number of covered employees	Violation	Action taken
	Driver used alcohol while performing safety-sensitive function	
	Driver used alcohol within 4 hours of performing safety-sensitive function	
	Driver used alcohol before taking a required post-accident alcohol test	
Employees who refused to submit to an alcohol test		Number
Covered employees who refused to submit to a random alcohol test required under the FHWA regulation		
Covered employees who refused to submit to a non-random alcohol test required under the FHWA regulation		
Alcohol Training/Education		Number
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations		

Drug and Alcohol Testing Management Information System (MIS) "EZ" Data Collection Form

Instructions

The following instructions are to be used as a guide for completing the Federal Highway Administration (FHWA) and the U.S. Department of Transportation (DOT) Drug and Alcohol Testing MIS "EZ" Data Collection Form. This form should only be used if there are no positive drug tests and no alcohol misuse to be reported by your company. These instructions explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FHWA and DOT drug and alcohol testing regulations.

SECTION A—MOTOR CARRIER EMPLOYER INFORMATION requires the company name for which the report is completed, a current address, the U.S. DOT number, and the ICC number (if applicable). A signature and title, date, and current telephone (including the area code) must be entered by the person certifying the correctness and completeness of the report.

SECTION B—COVERED EMPLOYEES requires a count for each employee category that must be tested under FHWA regulations. There is only one category of covered employees for FHWA, and that is "Drivers". The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the calendar year being reported. An employee who is hired twice or more in the reported year must be counted as a single employee.

Additional information must be completed if your company employs personnel who perform duties covered by the drug and alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s). The employees covered by more than one DOT operating administration must be counted under *all* appropriate operating administrations.

SECTION C—DRUG TESTING INFORMATION requires information for drug testing, refusals for testing, and training/education. The first table requests information on the **NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE** in each category for testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and

(7) follow-up testing. All numbers entered into this table should be for applicants or company employees in a covered position only (i.e. "Drivers"). Each part of this table must be completed for each category of testing. These numbers do not include refusals for testing. "COLL" requires the number of specimens collected for each category of testing. "NEG" requires a count for all completed tests that were verified negative by your Medical Review Officer (MRO). Do *not* include results of quality control (QC) samples submitted to the testing laboratory in any of the categories.

Following the table for drug testing data you must provide counts for drivers returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule. This information should be available from the personnel office and/or drug program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a random or non-random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FHWA regulation.

DRUG TRAINING/EDUCATION requires information on the number of supervisory personnel who have received the required drug training during the current reporting period.

SECTION D—ALCOHOL TESTING INFORMATION requires information for alcohol testing, refusals for testing, and training/education. The first table requests information on the **NUMBER OF SCREENING TESTS CONDUCTED** in each category of testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in covered positions only (i.e., "Drivers"). Enter the number of alcohol screening tests conducted for each category of testing. These numbers do not include refusals for testing.

Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide a count of the "Number of drivers who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations)". This information should be available from the personnel office and/or drug and alcohol program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a random or non-

random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FHWA regulation.

ALCOHOL TRAINING/EDUCATION requires information on the number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations during the current reporting period.

FHWA Drug and Alcohol Testing MIS "EZ" Data Collection Form OMB No. 2125-0543

A. Motor Carrier Employer Information

Company _____

Year Covered by This Report: _____

Principal Place of Business for Safety: _____

Physical Address _____

Mailing Address _____

U.S. DOT Number _____

ICC Number _____

I, the undersigned, certify that the information provided on the attached Federal Highway Administration Drug and Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

Signature _____

Date of Signature _____

Title _____

Phone Number _____

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statement or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Highway Administration estimates that the average burden for this report form is 30 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Director, Office of Motor Carrier Standards (HCS-1); Federal Highway Administration; 400 7th St., SW., Washington, DC 20590; OR Office of Management and Budget, Paperwork Reduction Project (2125-0543); Washington, DC 20503.

B. COVERED EMPLOYEES

Covered Employees

Employee Category	Number of FHWA Covered Employees	Number of Employees Covered by More Than One DOT Operating Administration				
		FAA	FRA	FTA	RSPA	USCG
Drivers						

C. DRUG TESTING INFORMATION

Number of Specimens Collected and Verified Negative

Employee Category	Pre-Employment		Random		Post-Accident/Non-Fatal		Post-Accident/Fatal		Reasonable Suspicion		Return to Duty		Follow-up	
	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg
Drivers														

Number of drivers returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule:

Employees who refused to submit to a drug test	Number
Covered employees who refused to submit to a random drug test required under the FHWA regulation: Covered employees who refused to submit to a non-random drug test required under the FHWA regulation:	
Drug training/education	Number
Supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FHWA drug testing regulations:	

D. ALCOHOL TESTING INFORMATION

Number of alcohol screening tests conducted

Employee category	Pre-employment	Random	Post-Accident/non-fatal	Post-Accident/fatal	Reasonable suspicion	Return to duty	Follow-up
Drivers							

Number of drivers who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations):

Employees who refused to submit to an alcohol test	Number
Covered employees who refused to submit to a random alcohol test required under the FHWA regulation: Covered employees who refused to submit to a non-random alcohol test required under the FHWA regulation:	
Alcohol training/education	Number
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations:	

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DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
50 CFR Part 663
[Docket No. 950301063-5063-01; I.D. 032194D]
RIN 0648-AF38
Pacific Coast Groundfish Fishery; Gear Modification
AGENCY: National Marine Fisheries Service (NMFS), National Oceanic

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises the groundfish trawl regulations and simplifies the marking requirements for commercial vertical hook-and-line gear that is closely tended in the Pacific Coast Groundfish fishery. This rule promotes the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by enhancing the effectiveness of minimum mesh size used in trawl gear, making trawl gear