service hours for this other equipment. Enter the figure from the corresponding column on Schedule C, line B.

Line 27—HSC. Enter the HSC from line 7.

Line 28—Total Maintenance and Service Cost. Multiply the figure on line 26 by the HSC listed on line 27. The result is the total annual cost for repairing and servicing other equipment.

[FR Doc. 96–7221 Filed 3–27–96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[OST Docket No. OST–96–1176, Notice 96–5]

RIN 2105–AC37

Amendments to Laboratory Certification Requirements

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This NPRM proposes provisions that would permit drug testing laboratories located outside the U.S. to participate in the Department's drug testing program. The certification would happen on the basis of recommendations from the Department of Health and Human Services.

DATES: Comments should be received by May 13, 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–96–1176, Department of Transportation, 400 7th Street SW., Room PL–400, Washington, DC, 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: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Room 10424, (202–366–9306); 400 7th Street SW., Washington DC, 20590.

SUPPLEMENTARY INFORMATION: Recently, the Federal Highway Administration (FHWA) issued a final rule applying its drug and alcohol testing requirements to foreign-based drivers operating in the United States (60 FR 49322; September 22, 1995). Under the rule, Canadian and Mexican drivers who come into the United States will be subject to testing on the same basis as U.S. drivers, beginning July 1, 1996, for employees of larger carriers and a year later for employees of smaller carriers.

In any case, Canadian and Mexican employers who collect drug urine specimens under FHWA rules will be able to have the specimens tested in U.S. laboratories certified by the Department of Health and Human Services (DHHS), on the same basis as U.S. employers. In the interest of facilitating program implementation, the Department hopes that it will be possible for Mexican and Canadian laboratories to participate in the program as well.

Canadian and Mexican laboratories may participate in the DOT-mandated testing program only if their participation is consistent with the Department's statutory authority. Strict safeguards for the accuracy and quality of laboratory tests are a key mandate of the Omnibus Transportation Employee Testing Act of 1991.

The motor carrier portion of the Act (49 U.S.C. 31306(b), which parallels the other modal sections of the Act), provides that, in carrying out the requirement to establish a motor carrier drug testing program, the Secretary ''shall'' develop requirements ''that shall''

> (2) For laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—
>
> (A) Comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing; * * *
>
> (C) Appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section.
>
> (3) Require that a laboratory involved in testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests; * * *

The language of these provisions is clearly mandatory, a point which the legislative history reinforces. Senate Report 102–54 (May 2, 1991), concerning S. 676, the bill that became the Act, notes, in response to concerns about testing accuracy and false positive tests, that ''By incorporating laboratory certification and testing procedures developed by HHS and DOT * * * the Committee has taken affirmative steps to ensure accuracy.'' (S. Rept. 102–54 at 7.) Later, in speaking of the laboratory and other safeguards in the bill, the report says that

> These safeguards are critical to the success of any testing program. They are designed to ensure that * * * there is accountability and accuracy of testing. They provide what the Committee believes are the basic minimums. * * * The Secretary is urged to carefully review the safeguards in any testing program to ensure they are adhered to in a vigorous manner. (*Id.* at 31)

More specifically on laboratory matters, the Committee said that

> Incorporating the HHS guidelines relating to laboratory standards and procedures * * * as DOT has done in Part 40 * * * is an essential component of the procedural safeguards specified in this subsection. * * * Realizing that these guidelines may be subject to future modification, the Committee has acted to specify that the basic elements of certain provisions now in effect are mandated, including the need for comprehensive standards and procedures for all aspects of laboratory testing of drugs * * * [and] the establishment of standards and procedures for the periodic review of laboratories and the development of criteria for laboratory certification or revocation of such certification. (*Id.* at 32)

It is noteworthy that Congress explicitly accepts an active DOT role in establishing and carrying out the laboratory-related provisions of the statute. What is mandatory is not that one agency or the other play any particular administrative role in the process, but that the protections embodied in the DHHS guidelines be applied, through DOT's rules, to participants in the program. There is no bar in the statutory language to a DOT rule assigning to DOT the task of reviewing and certifying laboratories, so long as these actions by DOT are based on the conformity of the laboratories to DOT's incorporation of DHHS laboratory standards. Consequently, DOT has broad legal discretion to take action in the area of drug testing procedures, extending to the certification of laboratories.

DOT and DHHS are working closely together with respect to the potential certification of foreign laboratories. As the two agencies envision the process, there could be two different ways in which foreign laboratories become certified. First, DHHS could review the application of the foreign laboratory, in the same manner that it reviews applications from U.S. laboratories. If the laboratory meets DHHS standards, DHHS would recommend that DOT certify the laboratory under DOT

authority. (The direct certifying authority of DHHS extends only to laboratories that would participate in the Federal employee testing program.) Second, DHHS could review the standards and procedures of a foreign certifying agency. If DHHS determined that the foreign agency had standards, procedures, and authority equivalent to those of DHHS, DHHS would recommend to DOT that DOT deem the foreign agency to be an equivalent certifying authority. Laboratories that the foreign agency certified would then be permitted to participate in the DOT testing program.

DOT and DHHS have discussed laboratory issues with officials of Transport Canada, the Canadian Trucking Association and its affiliates, and the Standards Council of Canada (a potential laboratory certification organization in Canada), as well as representatives of some Canadian laboratories. We have also had discussions with Mexican officials concerning program and laboratory matters. While a number of issues remain to be resolved, the Department is proposing a change to 49 CFR § 40.39 to accommodate the possibility that foreign laboratories may be able to participate in DOT-mandated drug testing.

The proposed amendment would add a new paragraph to authorize the participation of foreign laboratories in the DOT drug testing program in the two circumstances outlined above (i.e., based on a recommendation by DHHS that a particular laboratory meets DHHS certification requirements, or based on a certification by a foreign certifying organization whose standards and process had been deemed equivalent to those of DHHS). It should be emphasized that, if adopted, the proposed amendment would not have the effect of actually certifying any foreign laboratories. It would simply put in place a mechanism that would allow such laboratories to participate, if and when DOT and DHHS had determined that all issues had been resolved satisfactorily, in full compliance with DHHS requirements for laboratory certification.

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 12886. 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, since it deals with a subject (applying for laboratory certification) that is completely voluntary. 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 comment period is 45 days rather than 60 because, in order to permit the Department to certify foreign laboratories before the July 1, 1996, start date for testing of foreign drivers, the Department needs to complete this rulemaking on an expedited basis.

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.

2. Section 40.39 is proposed to be revised to read as follows:

§ 40.39 Use of Certified Laboratories.

(a) Except as provided in paragraph (b) of this section, employers subject to this part shall use only laboratories certified under the DHHS ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' April 11, 1988, and subsequent amendments thereto.

(b) Employers subject to this part may also use laboratories located outside the United States if—

(1) The Department of Transportation, based on a recommendation from DHHS, has certified the laboratory as meeting DHHS laboratory certification standards; or

(2) The Department of Transportation, based on a recommendation from DHHS, has recognized a foreign certifying organization as having equivalent laboratory certification standards and procedures to those of DHHS, and the foreign certifying organization has certified the laboratory pursuant to those equivalent standards and procedures.

Issued this 20th day of March 1996, at Washington, D.C.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96–7565 Filed 3–27–96; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 628

[Docket No. 960315079–6079–01; I.D. 031296D]

Atlantic Bluefish Fishery; Proposed Removal of FMP

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes the withdrawal of Secretarial approval of the Atlantic Bluefish Fishery Management Plan (FMP) and removal of its implementing regulations. This action is taken in response to the President's Regulatory Reform Initiative.

DATES: Public comments must be received on or before May 13, 1996.

ADDRESSES: Copies of the draft Environmental Assessment (EA) and Regulatory Impact Review are available from the Northeast Regional Office, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930.

Comments should be sent to Dr. Andrew A. Rosenberg, Regional Director, at the same address above. Please mark the envelope ''Comments—Bluefish Withdrawal.''

FOR FURTHER INFORMATION CONTACT: Myles Raizin, 508–281–9104.

SUPPLEMENTARY INFORMATION: Bluefish is a species that is found and harvested predominantly in state waters. The bluefish stock is described as overexploited with total catch having decreased from approximately 70,000 mt in 1983 to 22,000 mt in 1992 (17th Northeast Regional Stock Assessment Workshop, 1994). The recreational catch accounted for approximately 17,000 mt or 72 percent of the combined recreational and commercial catch in 1992. The 1994 Marine Recreational Fisheries Survey estimated that 93 percent of all recreational landings (11,963,000 fish) in that year were taken in state waters.

The FMP was prepared through the joint efforts of the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (ASMFC). It was designed to promote conservation of one of the most important Atlantic coast recreational species. It was approved by the Secretary of Commerce on March 20, 1990. The Council and the ASMFC