DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS–128, Amdt. No. 199–10]

RIN 2137–AC21

Alcohol Misuse Prevention Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Response to petition for reconsideration and request for clarification; Final rule.

SUMMARY: This action responds to a petition for reconsideration and request for clarification of a final rule, published February 15, 1994 (59 FR 7426), requiring operators of gas, hazardous liquid, and carbon dioxide pipelines and liquefied natural gas facilities subject to the pipeline safety regulations to implement alcohol misuse prevention programs for employees who perform certain safety-sensitive functions. The petition for reconsideration is granted in part and denied in part, for the reasons set forth below.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Special Counsel, Office of the Chief Counsel, RSPA, DOT 400 Seventh Street, SW., Washington, DC 20590–0001 (202–366–4400) or the RSPA Dockets Unit, (202) 366–4453, for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 1994, RSPA published a final rule (59 FR 7426) to require operators of gas, hazardous liquid, and carbon dioxide pipelines and liquefied natural gas (LNG) facilities, who are subject to 49 CFR part 192, 193, or 195, to implement alcohol misuse prevention programs for employees who perform certain covered functions. On March 15, 1994, RSPA received a Joint Petition for Reconsideration and Request for Clarification (Jt. Pet.) of the final rule from the American Gas Association and the Interstate Natural Gas Association of America (Petitioners). Discussion of the issues and RSPA's responses follow

1. RSPA Should Stay the Effective Date of the Final Rule on Alcohol Misuse Prevention Programs Until RSPA Issues Final Rules in Currently Pending Rulemaking Proceedings

The Petitioners noted that, in addition to the alcohol misuse rules, DOT also published two proposed rules on the use of alcohol screening devices and the use of blood alcohol tests in post-accident and reasonable suspicion situations when an evidential breath testing device (EBT) is not reasonably available.

The Petitioners request that RSPA stay implementation of the alcohol misuse rule until such time as DOT issues final regulations concerning screening devices and blood tests. The Petitioners contend that delaying implementation of the final rule does not present a safety issue because the type of alcohol testing required by the rule (e.g., post-accident, reasonable suspicion) is already performed by most natural gas utilities and pipeline operators.

The Petitioners note that the proposal on alternate screening devices would allow employers to use them to determine the presence of alcohol and then perform confirmation tests using approved EBTs. With regard to the proposed rule on blood testing, the Petitioners note that the rule would allow blood tests in post-accident and reasonable suspicion situations where operators may not have reasonable access to an EBT The Petitioners are concerned that, to comply with the current final rule, operators will have to purchase EBTs and train operators, or enter into contractual agreements for testing with EBTs, only to learn that DOT has now issued a rule authorizing blood testing. The Petitioners are concerned that pipeline operators will unnecessarily spend thousands of dollars to comply with a rule that may soon be revised. In addition, Petitioners request that, since pipeline operators are not required to conduct pre-employment or random alcohol testing, RSPA should allow blood testing as an unqualified alternative to EBTs. The Petitioners state that in the pipeline industry where many employees are located at remote sites, there will be numerous situations where operators will not be able to transport quickly an employee to a testing facility or have a breath alcohol technician and equipment readily available. Moreover, the Petitioners contend that mandating the use of EBTs will significantly add to the costs of carrying out alcohol prevention programs, in terms of procuring new equipment, developing training manuals, and instructing employees on their use, even though there exists a real possibility that operators will be unable to use the devices in the majority of testing situations.

The Petitioners note that the Omnibus Transportation Employee Testing Act of 1991 did not apply to the pipeline industry, and therefore RSPA is not constrained by the Act in promulgating alcohol regulations. The Petitioners also note that DOT's regulations attempt to protect employees from the invasiveness of blood testing, by requiring the use of EBTs. Petitioners contend, however, that the need for protection is most necessary in a random test, where the employee has done nothing to warrant being singled out for testing. In contrast, Petitioners state that, in the case of a post-accident or reasonable suspicion test, employee protection "is counterbalanced by the need to establish if alcohol use is a threat to safety or has played a role in an accident." (Jt. Pet. at 8).

RSPA Response. RSPA is denying the Petitioners' request. DOT's alcohol testing regulations are based on the concept that evidential breath testing is the preferred method of testing for the presence of alcohol. The reasons underlying the decision to select breath testing were discussed at some length in the Common Preamble (59 FR 7315). Evidential breath testing devices are reliable and highly accurate at detecting even low alcohol concentrations, and their use is possible in all transportation settings because they are portable. The devices have been in use a long time, and all States accept EBT results as reliable evidence of an individual's violation of a law establishing a *per se* prohibited blood alcohol concentration, as long as the devices are properly calibrated and operated by trained personnel. As important, EBTs provide an immediate confirmed result, which enables the immediate removal of an employee who has misused alcohol.

In contrast, blood alcohol testing is invasive, does not provide an immediate result, and requires extensive sample collection, shipping, and laboratory analysis procedures to implement. The NPRM on blood testing proposed to allow blood testing only in a limited set of circumstances where an EBT is not readily available. As stated in the preamble to the NPRM;

> [B]ecause of its greater invasiveness and because it does not produce an immediate result, the use of blood alcohol testing is intended to be used only in those reasonable suspicion and post-accident testing circumstances where it is not practicable to use breath testing. Blood alcohol testing is not intended, under the proposal, to be an equal alternative method that an employer can choose as a matter of preference.
> 59 FR 7367

Regardless of whether the blood testing proposal is adopted, we believe that the pipeline industry must make reasonable efforts to arrange for the use of a sufficient number of EBTs to

conduct reasonable suspicion and post-accident testing. Pipeline operators may arrange for the use of EBTs through purchase, lease, or contract with a consortium or other third-party provider. An operator need not purchase EBTs, but can make arrangements with a third party provider for those relatively few reasonable suspicion or post-accident tests that may need to be conducted. RSPA's experience with drug testing is that fewer than 3% of the total tests conducted have been in post-accident and reasonable suspicion situations.

We do not expect an operator to arrange for an EBT at every possible testing location, but an operator can certainly arrange for EBTs in locations where substantial numbers of employees are concentrated, and at any locations where accident or leak history suggests the need for an EBT. Large operators (those with more than 50 covered employees) should not encounter difficulty in arranging for the use of EBTs by the January 1, 1995 compliance date. EBTs are readily available for purchase from several manufacturers, and the inventory of EBTs is sufficient to enable most manufacturers to ship EBTs in five to ten days. In addition to inventory there is sufficient production capacity to manufacture approximately 7,500 new units each month. The National Highway Traffic Safety Administration (NHTSA) has issued final Model Specifications for the performance and testing of alcohol screening devices (August 2, 1994; 59 FR 39382), and will soon publish a Conforming Products List (CPL) identifying devices that meet the Model Specifications. The CPL is expected to include several preliminary breath testing devices (PBTs) and at least one saliva device.

Pipeline operators were advised of the final alcohol rule on February 15, 1994, allowing them almost one year (for large operators) and almost two years (for small operators) to make preparations for compliance with their respective January 1, 1995, and January 1, 1996 dates. Issuance of this decision on the petition for reconsideration should resolve any remaining uncertainty and provide sufficient time for operators to achieve compliance by the respective compliance dates.

2. RSPA Should Clarify Its Position on Dual Modal Coverage

The Petitioners contend that the RSPA final rule does not make clear the status of employees who may be subject to both the RSPA and the Federal Highway Administration (FHWA) rules. The Petitioners state that the Common Preamble to the DOT final rules (59 FR 7301, 7377) "specifically includes the example of an employee that is a pipeline worker and holds a commercial drivers license." (Jt. Pet. at 8). The Petitioners state that the Common Preamble states that, based upon an employee's major job function, an employer may designate an employee as either a pipeline employee or a driver for purposes of random alcohol testing. (59 FR 7337). Petitioners contend that DOT employees have made contradictory statements regarding this issue, and urge RSPA to clarify that employees who perform pipeline functions the majority of the time, would not have to be tested under the FHWA rules.

RSPA Response. RSPA is granting the request to clarify this issue, but is denying the Petitioners' request to classify an employee, for testing purposes, solely by the percentage of time the employee spends performing pipeline functions. Therefore, no change to the rule itself is necessary.

The Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act) amended the Commercial Motor Vehicle Safety Act of 1986 (now codified in 49 U.S.C. 31306) to require that all drivers of commercial motor vehicles (CMVs) who are required to obtain commercial driver's licenses (CDLs), be subject to testing for the illegal use of alcohol and controlled substances.

Therefore, a pipeline employee who is required by his or her employer (a pipeline operator) to hold a CDL as a condition of employment, and who is required to be available to drive a CMV as part of his or her job, is subject to the FHWA rules, including random testing. This requirement applies regardless of the amount of time that the employee actually drives a CMV or performs other safety-sensitive duties as defined in the FHWA regulations under 49 CFR part 382 (e.g., loading/unloading vehicles, waiting to be dispatched, performing vehicle inspections). The timing of any random test, however, does depend upon when the employee is performing that driving function. The employee may be subject to random alcohol testing under the FHWA rules at any time just before, during, or just after driving a CMV. If a pipeline employee may be called upon to drive a CMV at any time during the work week, then the employee is subject to random testing at any time during the employee's scheduled work shift. If, however, the employee is called upon to drive a CMV only two days a week (e.g., Monday and Friday), then the employee is only subject to random testing on those two days.

In addition, 49 U.S.C. 31306 requires that a driver required to obtain a CDL must be subject to pre-employment/pre-duty testing. Therefore, a pipeline employee who is required to obtain a CDL as a condition of employment, and who is required to be available to drive a CMV is subject to pre-employment/pre-duty testing under the FHWA rules. Requirements for pre-employment/pre-duty testing under the FHWA rules are contained in 49 CFR 382.301.

With respect to post-accident and reasonable suspicion testing, an employee is subject to testing while performing either pipeline or driving functions. If an employee is involved in accident while driving a CMV then the operator should look to the FHWA rules (49 CFR 390.5) to determine whether the accident is one that requires testing. Similarly, if an employee is involved in an accident while performing a covered pipeline function, the definition of an accident in section 199.205 applies.

Conversely, a pipeline employee who is not required by his or her employer (a pipeline operator) to hold a CDL as a condition of employment and does not drive a CMV as part of his or her job, is not subject to testing under the FHWA rules.

3. RSPA Should Clarify That Operators Are Only Responsible for Preventing Employees From Driving Company Vehicles

The Petitioners state that the "Background Material" accompanying the 49 CFR part 40 final regulations states that employees testing positive for alcohol "should not drive." (59 FR 7340, 7346). Petitioners contend that enforcing a broad prohibition on driving raises serious legal questions. The Petitioners request that DOT clarify that the employer's responsibility extends only to limiting employees from driving company vehicles or for company purposes, and that employers should not be responsible for policing the actions of an employee after he or she has tested positive.

RSPA Response. RSPA is granting the Petitioners' request to clarify this issue. The preamble to the 49 CFR part 40 regulations states that the DOT alcohol testing form includes a statement, to be signed by the employee, that persons who test positive should not drive or perform other safety-sensitive functions. (59 FR 7346). The requirement to sign the statement applies to the employee, not to the employer. The statement in the preamble that employers have a responsibility, as part of their alcohol education for employees, to emphasize

that employees must cease performing safety-sensitive functions if they test positive does not mean that employers must police the private conduct of employees who test positive.

The employer's specific responsibility is set forth in 49 CFR 199.215 and 199.237 which provide that an operator may not permit a covered employee who has an alcohol concentration of 0.02 or greater to perform or continue to perform covered functions until certain requirements are met. An operator may not permit such an employee, for example, to drive a CMV or perform a pipeline safety function. The rules do not require an operator to prohibit an employee from driving his or her own vehicle after having tested positive. However, under 49 CFR 199.239, an operator has an obligation to promulgate a policy on the misuse of alcohol, including providing educational materials to employees concerning the effects of alcohol misuse on an individual's health, work, and personal life. Such materials frequently include information advising on the dangers of driving while under the influence of alcohol. Therefore, no change to the rule is necessary.

4. RSPA Should Clarify That Operators Are Not Responsible for the Storage of EBT Devices

The Petitioners state that the DOT regulations in 49 CFR 40.55(c) require that employers store EBTs in a secure space. The Petitioners contend that it will often be the case that EBTs will not be in the control of the employer, but will be maintained by hospitals, contractors, and consortiums. Where testing devices are in the possession of others, the Petitioners contend, employers will have limited ability to control maintenance and operation of the devices. The Petitioners maintain that all that reasonably can be required of employers is that they contractually require third parties to abide by the regulations. The Petitioners contend that, as for emergency personnel and hospitals, employers obviously cannot be required to monitor their operations.

RSPA Response. Section 40.55(c) stipulates that when the employer is not using the EBT at an alcohol testing site, the employer shall store the EBT in a secure space. This provision plainly is directed to those situations when the employer is conducting the testing, either directly or through a contract with a third party provider. If the employer is conducting the testing, then the employer must secure the EBT when it is not in use. If the employer is conducting testing through a contractor, then the contract must provide that the contractor will secure the EBT when it is not in use. Therefore, no change to the rule is necessary.

5. RSPA Should Clarify That Operators May Combine Drug and Alcohol Training Requirements

The Petitioners state that the Common Preamble indicates that employers may combine their alcohol and drug training programs for supervisors, for a total time of two hours. The Petitioners contend that much of the information pertaining to detecting alcohol and drug abuse will overlap, and it is not necessary to require a two-hour training session. The Petitioners urge DOT to clarify that employers need only provide combined training on drugs and alcohol for one hour.

RSPA Response. RSPA is denying the Petitioners' request. The Common Preamble clearly provides that "[e]mployers are free to combine supervisor training for alcohol misuse detection with the comparable training for drug use detection currently required by the OA drug testing rules for a total of two hours to minimize costs and inconvenience." (59 FR 7334). The Petitioners did not provide any justification for reducing the supervisory training to a total of one hour for both drugs and alcohol, other than to suggest that "much of the information will overlap." (Jt. Pet. at 11). Although some of the symptoms of drug and alcohol use may be similar, the symptoms vary widely depending on the type and quantity of the substance ingested. Many commenters recommended that additional supervisory training on alcohol misuse (more than one hour) be required, and many employers voluntarily offer recurrent or follow-up training to ensure that supervisors have sufficient awareness of the indicators of alcohol and drug use. Therefore, RSPA is retaining the requirement that operators must provide a minimum of one hour of supervisory training for drug use and one hour for alcohol misuse, which may be combined into a single two-hour training period. Accordingly, no change to the rule is necessary.

6. RSPA Should Clarify Its Position on Follow-Up Tests for Alcohol and Drugs

The Petitioners state that the RSPA regulations in 49 CFR 199.225(d)(1) require follow-up alcohol tests in certain situations, but do not address whether it is appropriate for a substance abuse professional (SAP) also to require follow-up drug tests, when an individual also shows signs of drug abuse. The Petitioners point out that the Common Preamble, however, indicates that the rules will permit an employer to conduct follow-up drug tests, if the SAP suspects drug involvement. The Petitioners request that RSPA clarify that the authority in the Common Preamble also extends to RSPA operators.

RSPA Response. RSPA is granting the Petitioners' request to clarify this issue. Section 199.225(d)(1) provides that follow-up testing shall be conducted in accordance with the provisions of § 199.243(b)(2)(ii). This reference is in error, and should be to § 199.243(c)(2)(ii), which provides that follow-up testing may include testing for drugs, as directed by the SAP to be performed in accordance with 49 CFR part 40. RSPA is amending § 199.225(d)(1) to include the correct reference.

7 RSPA Should Clarify That Companies Are Not Responsible for Ensuring Contractor Compliance With the Final Rule

The Petitioners contend that operators should not be responsible for ensuring that contractors comply with the alcohol misuse program. (Jt. Pet. at 11). The Petitioners contend that the monitoring responsibility for contractor employees is highly impracticable and difficult to achieve, particularly for small operators who rely on many contractors, and may enter into contracts at short notice. The Petitioners assert that there are practical problems in monitoring transient workers, or in knowing which particular contract employees will perform certain jobs. The Petitioners state that contractors "are used predominantly for construction, and almost never for operations. Therefore, it is difficult to envision circumstances where post-accident testing would be required for contractors." (Jt. Pet. at 12). The Petitioners assert that "for cause" testing is also unnecessary, because currently when an operator suspects a contractor employee is alcohol-impaired, the contractor is ordered to remove the employee. The Petitioners therefore contend that requiring operators to oversee or manage a detailed alcohol compliance program for contractors is an inefficient use of resources and an unnecessary burden, given that the only testing that is likely to be carried out is "for cause" testing, which is already handled adequately by operator/contractor agreements.

RSPA Response. RSPA is denying the Petitioners' request. RSPA's longstanding and oft-stated position on this issue is that a pipeline operator who chooses to perform safety-sensitive functions by using contractors is held

responsible for compliance with the Pipeline Safety Regulations just as if the operator's own employees were performing the work (54 FR 51747 December 18, 1989; 57 FR 59714, December 15, 1992). The proper performance of a safety-sensitive function should not be dependent on the individual's direct or indirect employment relationship with the operator. Furthermore, the alcohol rules are limited to persons performing covered functions, i.e., operation, maintenance, and emergency response functions that are regulated by 49 CFR parts 192, 193, or 195 and performed on a pipeline or liquefied natural gas facility. Covered functions do not include clerical, truck driving, accounting, or other functions not covered by parts 192, 193, or 195 (49 CFR 199.205).

The Petitioners themselves note that contractors are used predominantly for construction (which generally is not a covered function), are almost never used for operations, and, therefore, post-accident testing for contractors would be rare. By this same reasoning, contractors would only rarely be subject to reasonable suspicion testing, i.e., when performing covered functions. If the Petitioners are correct that few contractor employees will be performing covered functions, then there should be a very minimal burden on operators. If a contractor does not perform covered functions, then no operator monitoring will be required.

In those instances where a contractor employee is performing a covered function, RSPA is not persuaded that the employee should be removed, without a test, because the operator suspects that the employee is alcohol-impaired. If the operator has the opportunity to observe the employee and determines that reasonable suspicion exists that the employee is impaired, the employee must be tested.

Although an operator may choose, under § 199.245, to allow a contractor to carry out the required alcohol testing, training, and education, the operator may find that it is simpler and more cost-effective to assume that responsibility directly. Unlike random and pre-employment testing, which involve large numbers of tests, post-accident and reasonable suspicion testing should result in relatively few tests. RSPA's experience with drug testing is that fewer than 3% of the total tests conducted have been in post-accident and reasonable suspicion situations. Regardless of whether it employs contractors, an operator must have an alcohol misuse plan, provide educational materials to its employees, train supervisors, and be prepared to conduct tests. An operator could make copies of its educational materials available to contractor employees, use trained supervisors to observe contractor employees who are performing safety-sensitive functions, and test contractor employees in those few instances when testing is required. The arguments advanced by the Petitioners do not demonstrate that the requirement to ensure contractor compliance with the alcohol rule is unduly burdensome, impractical, or unnecessary. Therefore, RSPA is retaining the requirement that the operator is responsible for ensuring that employees who perform covered functions for the operator, whether directly or by contract, are subject to the requirements of the RSPA rule. Accordingly, no change to the rule is necessary.

8. RSPA Should Clarify That Operators May Continue To Remove an Employee Without Conducting a Test

The Petitioners state that many operators currently remove a safety-sensitive employee from the job, without performing an alcohol test, who is suspected of being alcohol-impaired. The Petitioners urge RSPA to amend the final rule and allow employers to continue this practice as long as the employee is made aware that the employer is relying on company policy or a labor agreement and not the DOT regulations, for the authority to remove the employee. The Petitioners contend that if the employee is not allowed to return to the job unless the other DOT requirements are met, such as evaluation by a SAP and follow-up testing, then the operator should be permitted to remove an employee without performing an alcohol test. The Petitioners suggested that, for reporting purposes, operators should be required to notify DOT of those employees who were not tested, but nonetheless removed from the job, counseled in alcohol counseling programs, or dismissed.

RSPA Response. RSPA is denying the Petitioners' request. Section 199.225(b) requires each operator to require an employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions in the alcohol misuse rule (e.g., has an alcohol concentration of 0.04 or greater, or has used alcohol while performing covered functions). Section 199.225(b)(4)(ii) provides that, notwithstanding the absence of a reasonable suspicion test, an operator shall not allow an employee to perform covered functions while the employee appears to be under the influence of or impaired by alcohol, until eight hours have passed or the employee has been tested and has a result below 0.02. As discussed in the Common Preamble (59 FR 7328), an employer who observes an employee exhibiting the appearance of alcohol misuse, must test that employee. However, "when it is infeasible or impossible to conduct a reasonable suspicion test in a timely manner (e.g., an EBT is unavailable or broken), the employee is not permitted to perform safety-sensitive functions for eight hours (or until obtaining a result below 0.02 on a test if an EBT subsequently becomes available within the 8-hour period)."

Section 199.225(b)(4)(iii) specifies that, except as provided in § 199.225(b)(4)(ii) (i.e., removal from covered functions for eight hours or until a test result of below 0.02), "no operator shall take any action under [the RSPA alcohol misuse rule] against an employee based solely on the employee's behavior and appearance, in the absence of an alcohol test. This does not prohibit an operator with the authority independent of this [rule] from taking any action otherwise consistent with law." Under the RSPA rule, an operator is required to test an employee when the operator has reason to believe the employee is under the influence of or impaired by alcohol, or has violated any other prohibition in the RSPA rule. The operator may not simply remove the employee without conducting a test, unless conducting a test is physically impossible because the employee is in a remote location or the only available EBT is broken. In such a situation, where a test cannot be conducted, the operator must ensure that the employee does not perform any covered functions for eight hours or until a test result of below 0.02 is obtained, whichever comes first. The operator may take no other action against the employee under authority of the RSPA rule. If the operator wishes to take additional action under its own authority, it may do so, but it must conduct reasonable suspicion testing in accordance with the RSPA rule.

As explained in the preamble to the RSPA final rule (59 FR 7427), RSPA will monitor the data that we receive from post-accident and reasonable suspicion tests to determine if further action is warranted. Alcohol misuse is a problem in society generally, and it is reasonable to expect that the pipeline industry is not immune from that problem. Testing is vital to determine the extent of any problem, and the resulting data is necessary to evaluate the alcohol misuse

program and develop more effective strategies for eliminating alcohol misuse. Accordingly, no change to the rule is necessary.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Although the February 15, 1994 alcohol misuse final rule was significant, this document is not significant because it merely clarifies the February 15 rule and makes no substantive changes to the rule text. Therefore, this document was not reviewed by the Office of Management and Budget under section 3(f) of Executive Order 12866, and is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation prepared for the February 15, 1994 final rule is available for review in the docket.

Paperwork Reduction Act

This document does not contain any new information collection requirements subject to the Paperwork Reduction Act.

Regulatory Flexibility Act

This document merely clarifies the final rule published on February 15, 1994. Therefore, I certify under Section 605 of the Regulatory Flexibility Act (5 U.S.C.) that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612

This action will not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of Government. Therefore, RSPA has determined that this action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

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

In consideration of the foregoing, RSPA is amending 49 CFR part 199 as follows:

PART 199—DRUG AND ALCOHOL TESTING

1. The authority citation for part 199 is revised to read as follows:

Authority: 49 U.S.C. 60101 *et seq.*, 49 CFR 1.53.

2. Section 199.225 is amended by revising paragraph (d)(1) to read as follows:

§ 199.225 Alcohol tests required.

(d) *Follow-up testing.* (1) Following a determination under § 199.243(b) that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each operator shall ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional in accordance with the provisions of § 199.243(c)(2)(ii).

Issued in Washington, DC on November 22, 1994.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

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