

decisions. The revised plan may designate major rights-of-way corridors for utility transmission lines, pipelines, and water canals. The effects of such designations on energy supply, distribution, or use will be considered at the time such designations are proposed.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and, therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Federalism

The agency has considered this proposed rule under the requirements of Executive Order 13132, Federalism. The agency has made a preliminary assessment that the rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Based on comments received on this proposed rule, the agency will determine if any additional consultation will be needed with State and local governments prior to adopting a final rule.

Consultation With Tribal Governments

This proposed rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of private property. This proposed rule only allows the Tongass National Forest to use either the existing planning regulations or the regulations in effect before November 9, 2000 for its next plan revision.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. Nevertheless, in the event that such a conflict was identified, the proposed rule, if implemented, would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this proposed rule; and (2) the Department would not require the parties to use administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed rule on State, local, and Tribal governments and the private sector. This rule does not compel the expenditure of \$100 million or more by any State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Forest and forest products, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend subpart A of part 219 of title 36 of the Code of Federal Regulations as follows:

PART 219—PLANNING

Subpart A—National Forest System Land Management Planning

1. The authority citation for subpart A continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

2. Amend § 219.14 by revising paragraph (d)(1) to read as follows:

§ 219.14 Effective dates and transition.

* * * * *

(d)(1) Plan development and plan revisions initiated after January 5, 2005 must conform to the requirements of this subpart, except that the plan for the Tongass National Forest may be revised once under this subpart or the planning

regulations in effect before November 9, 2000.

* * * * *

Dated: December 16, 2005.

Dale N. Bosworth,

Chief, USDA Forest Service.

[FR Doc. E5–8245 Filed 1–3–06; 8:45 am]

BILLING CODE 3410–11–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1604

Accident Investigation Initiation Notice and Order To Preserve Evidence

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Proposed rule.

SUMMARY: The Chemical Safety and Hazard Investigation Board (CSB) proposes the adoption of the following regulation that is intended to notify the owner and/or operator of a facility that suffers an accidental release as defined by the Clean Air Act Amendments of 1990, (also referred to here as a chemical “accident” or “incident”), that the CSB intends to deploy investigators to its facility, and that relevant evidence must be preserved. Under this regulation, site control would remain the responsibility of the owner and/or operator of the affected facility. However, owners/operators are required by this regulation to exercise care to ensure that the accident scene and relevant evidence found therein is adequately protected from alteration.

DATES: Written comments must be received on or before February 3, 2005.

ADDRESSES: You may submit written comments concerning this proposed rule, by the following method:

- Mail/Express delivery service: Chemical Safety and Hazard Investigation Board, Office of General Counsel, Attn: Christopher Warner, 2175 K Street, NW., Suite 650, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Christopher Warner, 202–261–7600.

SUPPLEMENTARY INFORMATION: Preserving physical evidence at an accident scene is an important component in all manner of investigations. In a chemical accident investigation, securing an accident scene and preserving the integrity of the evidence contained therein is critical, especially where significant explosions or fires have destroyed some or much of the relevant physical evidence at the accident site. According to one good-practice guideline on chemical accident

investigation, securing the scene in order to preserve evidence is the first priority of an investigator after all first responder responsibilities are met (*i.e.*, to rescue victims and provide them with medical treatment, stabilize and secure the accident scene, and address imminent environmental concerns in accordance with controlling law). See, generally, *Guidelines for Investigating Chemical Process Incidents*, Center for Chemical Process Safety of the American Institute of Chemical Engineers, pp. 108–109, 115–122 (2nd ed. 2003), available in bookstores, libraries, and directly from CCPS at 3 Park Avenue, New York, NY 10016, or <http://www.aiche.org/ccps>.

The CSB's enabling statute provides the CSB with broad authority to establish any regulations needed to meet the requirements of its investigative mission. Specifically, the Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties. In addition to this broad statutory authority, the legislative history accompanying the CSB's enabling statute lists "five enumerated duties" for the Board, the third of which includes the duty to establish measures to preserve evidence which may substantiate the cause or probable cause of an accident. Pertinent legislative history also provides that Board regulations shall provide for the preservation of evidence at the site of the accident so that the Board may properly conduct an investigation to determine the cause or probable cause when its representatives arrive at the site of the accident. Moreover, Congress specifically intended that the CSB be empowered to regulate the activities of other parties during accident investigations undertaken by the CSB.

Through this proposed regulation, the CSB intends to establish the means by which it will preserve accident scenes/sites, and the evidence within those sites. The CSB proposes a procedure by which it may issue a written "Notice of Accident Investigation Initiation and Order to Preserve Evidence." The Notice shall identify the CSB's Investigator-in-Charge (IIC), provide contact information, and an official investigation number. The Notice shall also specify that the owner/operator continues to be responsible for the security and protection of its own site, including any real or personal property located therein, and that the owner/operator continues to be responsible for the protection of the life, health, and safety of its employees or any other people affected by the accident under investigation, as well as compliance

with all federal, state, or local laws. Last, the Notice shall specifically inform the owner/operator of its legal obligation to preserve the accident site, to the maximum extent possible, in its original, post-accident state, and to preserve any evidence at the site that is or might reasonably be relevant to the CSB's investigation.

The CSB recognizes that emergency response and mitigation activities will take precedence over the preservation of evidence and anticipates that most emergency response activities will be concluded prior to the issuance of a Notice under this rule. This rule is not intended to interfere in any manner with critical first response activities—the rescue of victims and necessary steps to address immediate public health and environmental concerns in accordance with controlling law. The rule defines such emergency response activities as "qualifying emergencies." In the event that an owner/operator anticipates changing or modifying the site or any evidence following the issuance of a Notice, the owner/operator would be required to contact the CSB and, if advance notice to the CSB is not possible, to document the condition of the site.

The CSB is aware that there may be multiple Federal, state, and local agencies responding to an incident and each agency will have specific authorities and responsibilities. The regulation specifically states that it "shall not be interpreted to abrogate or supersede any other Federal, State, or local agencies' ability to provide emergency response or to perform their duties arising under law."

The CSB coordinates its field investigative activities with other parties in accordance with the National Incident Management System and through memoranda of understanding with specific agencies. The CSB has Memoranda of Understanding with ATF, OSHA, EPA, NIST, and the NTSB which set out procedures for dealing with site specific issues. The CSB also works with owners/operators and other governmental responders to enter into site-specific evidence preservation agreements. Where such voluntary agreements can be entered into quickly and in a manner that does not compromise the CSB's investigation, a Notice under this rule may not be necessary, or if one is issued, it may be rescinded upon execution of such an agreement.

This regulation does not address specific issues that may arise between Federal, State, and local agencies regarding custody of or testing of evidence in specific investigations.

Such issues are worked out on a case-by-case basis with interested parties. The CSB, therefore, proposes the following rule to address critical issues surrounding evidence preservation in order that CSB investigators have the fullest possible opportunity to determine the causes of chemical accidents to which they are deployed. The CSB invites comments on these proposed regulations.

Regulatory Impact

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on such small entities. This analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The CSB has considered the impact of this proposed rule under the Regulatory Flexibility Act. The CSB's General Counsel, Christopher W. Warner, certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

We reviewed this rule to determine whether it invokes issues that would subject it to the Paperwork Reduction Act (PRA). While the PRA applies to agencies and collections of information conducted or sponsored by the CSB, the Act, 44 U.S.C. 3518(c), exempts collections of information that occur "during the conduct of * * * an administrative action, investigation, or audit involving an agency against specific individuals or entities," except for investigations or audits "undertaken with reference to a category of individual or entities such as a class of licensees or an entire industry." The rule adopted below comes squarely within this exemption, as it deals entirely with administrative investigations and actions involving specific individuals or entities. Therefore, we have determined that the PRA does not apply to this rule.

Unfunded Mandates Reform Act of 1995

This proposed rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a Federal mandate that may

result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act (\$123 million in 2005, adjusted annually for inflation).

List of Subjects in 40 CFR Part 1604

Administrative practice and procedure, Investigations.

Dated: December 27, 2005.

Raymond C. Porfiri,

Deputy General Counsel.

Accordingly, for the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board proposes to add a new 40 CFR part 1604 to read as follows:

PART 1604—NOTICE OF ACCIDENT INVESTIGATION INITIATION AND ORDER TO PRESERVE EVIDENCE

Sec.

1604.1 Purpose and Scope of Regulations.

1604.2 Definitions.

1604.3 Procedures.

1604.4 Enforcement.

Authority: 42 U.S.C. 7412(r)(6)(N).

§ 1604.1 Purpose and Scope of Regulations.

The purpose of this regulation is to provide for the preservation of evidence at the site of an accidental release so that the Chemical Safety and Hazard Investigation Board (CSB) may conduct a full investigation to determine the cause or probable cause of a release. This regulation applies only to an accidental release to which the CSB deploys or intends to deploy investigators as part of a Field Investigation Team or Preliminary Assessment Team, and only where the owner and/or operator of the facility that suffered an accidental release receives a "Notice of Accident Investigation Initiation and Order to Preserve Evidence," as outlined in this rule.

§ 1604.2 Definitions.

Accidental Release refers to an unanticipated emission of a substance regulated under 42 U.S.C. 7412, or other extremely hazardous substance into the ambient air from a stationary source resulting in a fatality, serious injury, or substantial property damages.

Field Investigation Team refers to one or more CSB personnel, in the possession of appropriate credentials and a Notice of Inspection Authority, and led by a designated CSB Investigator-in-Charge (IIC), who has been authorized by the CSB to investigate an accidental release.

Preliminary Assessment Team refers to one or more CSB personnel, in the possession of appropriate credentials and a Notice of Inspection Authority, and led by a designated IIC, that has been tasked by the CSB to make a preliminary factual analysis of an accidental release in order that the CSB can make an informed decision as to whether or not the CSB will undertake an investigation of an incident.

Qualifying emergency refers to genuine emergency situations or circumstances that include:

(1) Removing persons injured or trapped and obtaining for them needed medical attention or removing the remains of deceased persons;

(2) Extinguishing fires;

(3) Stabilizing an accident scene to the extent necessary to protect the facility from further imminent damage;

(3) Protecting workers or the public from additional releases or other potential source(s) of injury;

(4) Complying with any Federal, State, or local environmental laws requiring an immediate response (including but not limited to immediate accident reporting, clean up of any pollutants or hazardous substances, mitigation, etc.); and

(5) Taking any other actions required to meet the lawful obligations imposed by any other Federal, State, or local laws.

Preserve an accident site or scene refers to the obligation of a facility owner and/or operator to maintain and keep intact the status quo with respect to the site (or scene) of an accidental release, including but not limited to the part of the facility in which a chemical accident occurred, as well as the area immediately adjacent to the site of the accident. The "accident site or scene" portion of this definition must necessarily be flexible, and is to be determined based on an analysis of the totality of the circumstances. An accident site or scene could therefore be small, such as an accident that occurred indoors and is limited to a single room. Conversely, an accident site or scene could be quite large, such as when debris and other relevant evidence is scattered over a wide area following an explosion. This obligation necessarily includes but is not limited to the notification requirements in § 1604.3(g).

Protect any relevant evidence refers to the obligation of a facility owner and/or operator to ensure that any evidence within an accident site or scene is not tampered with, moved, or in any other way altered or changed, and the status and integrity of the evidence is protected from post-accident human intervention. This obligation extends to

any personnel working for or on behalf of the owner/operator. It also includes taking reasonable steps to protect any such evidence from third party intervention through appropriate security and/or other site control measures. The "relevant evidence" portion of this definition includes any structures, artifacts, machine(s), device(s), apparatus(es), process(es), control(s), equipment, sample(s), substance(s), and/or any other physical objects or documents that a reasonable person would believe might help establish the cause or causes of the accident under investigation. This obligation necessarily includes but is not limited to the notification requirements in § 1604.3(g).

§ 1604.3 Procedures.

(a) After a decision has been made by the CSB to deploy investigators to the site or scene of an accidental release, the CSB IIC designated to lead any type of CSB team at a particular accident scene may issue a Notice of Accident Investigation Initiation and Order to Preserve to the owner and/or operator of the facility that suffered the accident. Such a notice shall be issued whenever an IIC has determined that physical evidence at the site is in danger of being removed, altered, or tampered with. The Notice shall identify the IIC by name, and it shall also provide appropriate contact information, an official investigation number, and an estimate of when CSB personnel will arrive at the scene, if they have not already arrived. The Notice shall also specify that the owner/operator continues to be responsible for the security and protection of its own site, and any real or personal property located therein, and that nothing in this regulation or any subsequent site control agreement that might be entered into relieves the owner/operator of its obligations under law to protect the life, health, and safety of its employees or any other people affected by the accident under investigation, or any of its other obligations under any other federal, state, or local law.

(b) In the same Notice, the IIC shall further inform the owner and/or operator that the owner/operator is required to preserve the accident site or scene, and that the owner/operator must protect any relevant evidence therein which may assist the CSB in determining the cause or causes of the accidental release, subject to the provisions of paragraphs (c) and (d) of this section. Special attention should be given to preserve records; files; papers; electronic records; processes; controls; facilities; and samples of substances,

physical objects, or any documents believed to be involved in the accident, or in any way relevant to the accident and/or the CSB investigation. With respect to records of any type, the Notice shall specify that an owner/operator is required to preserve relevant records that may be stored at a different location. The Notice will also indicate that such items shall also be made readily available to CSB personnel at the first reasonable opportunity.

(c) Upon receipt of a Notice of Accident Investigation Initiation and Order to Preserve signed by a CSB IIC, an owner and/or operator must acknowledge receipt in writing and post a copy of the Notice of Accident Investigation Initiation and Order to Preserve in a conspicuous place such as in the immediate area of, adjacent to, or at the entrance to, the machine(s), device(s), apparatus(es), process(es), control(s), equipment, sample(s), or substance(s) and any other physical objects or documents that are believed to be relevant in determining the cause(s) of the accident. An owner/operator should post additional copies of the notice at different areas of the scene if that would aid site preservation. In addition, the owner and/or operator must comply with the Order to the maximum extent possible, and must refrain from any activity that would affect the accident scene/site, or potential evidence contained therein, except to the extent necessary to respond to a qualifying emergency as defined in § 1604.2.

(d) When it appears it will become necessary to disturb an accident scene/site or any evidence contained therein in any way prior to the arrival of CSB personnel due to the existence of a qualifying emergency, the owner or operator of the facility shall notify the CSB as soon as possible of the existence of a qualifying emergency and allow the CSB the opportunity to: (1) Comment on the nature and extent of proposed alteration to the evidence or scene/site; (2) attempt to document the evidence/site through appropriate means, as quickly as possible, including through the use of a third party; or (3) seek other appropriate actions, including but not limited to an emergency court order in federal court to prohibit the proposed alteration to the evidence/site.

(e) If advance notice to the CSB is not possible under the circumstances prior to the alteration of the accident site or evidence due to existence of a qualifying emergency, post-action written notice must be given to the CSB as soon as possible after the alteration, which must include the following: (1) A complete explanation as to why advance

notice could not be provided to the CSB prior to altering the evidence/site; (2) a complete description of all actions taken, and by whom, to rectify the emergency; (3) a chronological timeline of events that includes all actions from the original accidental release through the termination of responsive activities required by the qualifying emergency; and (4) photographic or video evidence, and any other documentation (i.e., descriptive notes, sketches, or other such documentation) indicating the original position and condition of any evidence which had to be moved or altered, as well as any changes to the accident site itself.

(f) A Notice of Accident Investigation Initiation and Order to Preserve shall remain in effect until the owner and/or operator of the facility in question receives written notice from the IIC or other CSB official designated by the Chairperson that the original Order to Preserve has been rescinded. A signed site control agreement does not negate or otherwise nullify a previously issued Notice of Accident Investigation Initiation and Order to Preserve unless such agreement contains a specific provision rescinding that Order.

(g) This regulation shall not be interpreted to mean that the CSB is authorized to bar any party from entering an accident site to pursue their own independent investigation when that party is authorized by relevant law to enter the site and conduct an investigation. However, owners and/or operators of facilities that have suffered an accidental release, upon receipt of a CSB Notice of Accident Investigation Initiation and Order to Preserve, shall ensure that its employees, its contractors, and any third parties that might seek access to the owner's and/or operator's property, wherever it may be located, have been provided a copy of the Notice of Accident Investigation Initiation and Order to Preserve.

(h) This regulation shall not be interpreted to abrogate or supersede the designation of the National Transportation Safety Board as the lead agency with respect to chemical accidents in the transportation sector, pursuant to 49 U.S.C. 1101 et seq.

(i) This regulation shall not be interpreted to abrogate or supersede any other Federal, State, or local agencies' ability to provide emergency response or to perform their duties arising under law. In most instances, the actions taken by emergency responders should not conflict with the requirement to preserve relevant evidence. In the event that the owner and/or operator of a facility determines that preserving an accident scene or protecting relevant

evidence under this rule is incompatible with the lawful demands of other governmental responders, the owner/operator must provide notice to the CSB under paragraph (d) of this section prior to altering the scene so that the CSB may attempt to resolve the issue, or if advance notice is not possible, document the condition of the site as provided under paragraph (e) of this section.

§ 1604.4 Enforcement.

Upon a written showing by the IIC that relevant evidence may be altered or destroyed, the IIC may, with the concurrence of the General Counsel, immediately issue a subpoena for such evidence to the owner/operator of the facility. If a person disobeys a subpoena issued by the IIC under this section, the Attorney General, acting on behalf of the CSB, may bring a civil action in a district court of the United States to enforce the subpoena. Instances of any knowing failure to comply with these regulations and/or the express terms contained in any Notice sent out pursuant to these regulations may also be referred to the U.S. Department of Justice, a local United States Attorney, or any State's Attorney General, for investigation and possible enforcement under applicable Federal or State law.

[FR Doc. E5-8239 Filed 1-3-06; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05-3209, Docket No. 02-106, RM-10416 and Docket No. 02-108, RM-10418]

Radio Broadcasting Services; Harrisville and Presque Isle, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses at the request of Petitioner Northern Paul Bunyan Radio Company its pending petitions for rulemaking to allot Channel 227A at Presque Isle, Michigan in MB Docket No. 02-106, RM-10416 and to allot Channel 226A at Harrisville, Michigan in MB Docket No. 02-108, RM-10418. See 67 FR 39933, published June 11, 2002. This document also dismisses a counterproposal filed by Northern Michigan Radio, Inc. which proposes *inter alia* to reallocate Channel 223C1 from Atlanta, Michigan to Vanderbilt, Michigan, and conflicts with both the proposals for Presque Isle and Harrisville. The counterproposal is