

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Parts 4 and 159

RIN 1515-AC30

#### Foreign Repairs to American Vessels

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to revise the Customs Regulations regarding the declaration, entry, assessment of duty and processing of petitions for relief from duty for vessels of the United States which undergo foreign shipyard operations. It is intended that the Customs Regulations regarding this subject accurately reflect the amended underlying statutory authority, as well as legal and policy determinations made as a result of judicial decisions and administrative enforcement experience.

**DATES:** Comments must be received on or before June 21, 1999.

**ADDRESSES:** Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** *Operational aspects:* Glenn Seale, Supervisory Customs Liquidator, 504-670-2137. *Legal aspects:* Larry L. Burton, Office of Regulations and Rulings, 202-927-1287.

#### SUPPLEMENTARY INFORMATION:

##### Background

The genesis of the modern vessel repair statute, 19 U.S.C. 1466, is found in the Act of July 18, 1866, Chapter 24, section 23 (14 Stat. 183). A 50 percent *ad valorem* duty was imposed on the foreign cost of repairs to United States vessels documented to engage in the foreign or coastwise trade on the northern, northeastern, and northwestern frontiers (practically speaking, Great Lakes, Atlantic, and

Pacific Coast trade with Canada). The statute also provided for remission or refund of duties where it was established by sufficient evidence that the vessel had been compelled to seek foreign repairs due to a weather-related or other casualty. The statute was recodified in the Revised Statutes of the United States in 1874 (R.S. 3114 and 3115), but was left largely unamended until the Act of September 21, 1922, at which time the area of consideration for dutiable repairs was expanded to include repairs to all vessels documented under U.S. law to engage in the foreign or coastwise trade, as well as those intended to be so employed.

The statute has undergone amendment several times since 1922 and has been the subject of considerable judicial interpretation over the years as well. Recently, however, the statute has been amended in significant ways and a court case with broad impact on the administration of the law has also been decided.

On August 20, 1990, the President signed into law the Customs and Trade Act of 1990 (Pub. L. 101-382), section 484E of which amended the vessel repair statute by adding a new subsection (h). Subsection (h), which by its terms expired on December 31, 1992, included two elements. These concerned the exclusion from vessel repair duty of Lighter Aboard Ship (LASH) barges, and of spare parts and materials for use in vessel repairs abroad which had previously been imported and duty paid at the appropriate rate under the Harmonized Tariff Schedule of the United States (HTSUS). Two years after the expiration of that legislation the Congress enacted section 112 of Pub. L. 103-465 which became effective on January 1, 1995. That provision permanently reenacted the previously expired 19 U.S.C. 1466(h) (1) and (2), as discussed above, and also added a new subsection (h)(3) which, as administered by Customs, provides that vessel repair duties will be assessed at the applicable HTSUS rate for spare parts which are necessarily installed on vessels overseas prior to those spare parts ever having been entered into the United States for entry and consumption, such as is necessary under the (h)(2) provision.

The most basic issue to be determined in applying the vessel repair statute to a factual situation is, of course, whether

a repair has taken place within the meaning of 19 U.S.C. 1466(a). Courts have ruled extensively on the "repair" cost issue and the result is a continually narrowing field of dutiable repair. One early case (*United States v. George Hall Coal Co.*, 134 F. 1003 (1905)), was the first to find any of various types of expenses associated with repairs to be classifiable as not subject to the assessment of vessel repair duties. The case established that the expense of drydocking a vessel (regardless of the underlying need to drydock) is not an element of dutiable value in foreign repair costs. Drydocking is a major, but not isolated, expense in general ship repair operations. Many other associated expenses and services are necessary adjuncts to drydocking and are logically inseparable from the drydocking rule. These include such items as drydock block arrangement, sea water supply (for firefighting equipment), hose hook-up and disconnection charges, fire watch services, the services of a crane for drydocking-related operations, the provision of compressed air, cleaning of the drydock following repairs, among numerous others. These necessary services are costly, are supplied at nearly each drydocking, and had until recently been considered to be classifiable as duty-free.

On December 29, 1994, the United States Court of Appeals for the Federal Circuit decided the case of *Texaco Marine Services, Inc., and Texaco Refining and Marketing, Inc. v. United States*, 44 F.3d 1539. While this case was submitted on appeal regarding the dutiability of specific foreign shipyard operations, the Court went much further by considering the propriety of several long-standing court cases, including the opinion in *George Hall, supra*. In so doing, a whole range of charges are subjected to duty consideration which had been insulated from such treatment since 1905.

The recent upheaval in terms of both statutory amendment and judicial interpretation has resulted in the need to update the regulatory provisions which implement the vessel repair statute. This has led to the proposed revisions contained within this document, which are presented in a more streamlined and simpler format, all in conformance with the recent changes. Most significantly in this connection, the proposed amendments

eliminate the Petition for Review process, currently the second of two pre-protest appeals for relief from duty, and vest in the Vessel Repair Units full authority to process and decide Applications for Relief without restrictions as to the amount of potential duty refund or remission.

Additionally, it is proposed that the Customs Regulations in part 159 be amended to recognize that vessel repair entries are not considered to be subject to liquidation, and that any duties paid pursuant to a vessel repair entry will henceforth be considered to be charges or exactions within the meaning of subsection (a)(3) of section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), the statute under which decisions of the Customs Service are protested. As such, duty determinations on vessel repair entries will be protestable but will not be subject to voluntary reliquidation or deemed liquidation procedures. This distinction will serve to recognize elements which are unique to the vessel repair entry process such as potential protracted delays in supplying cost information due to difficulty in obtaining proof of foreign expenses from shipyards in a timely fashion.

#### Comments

Before adopting this proposal, consideration will be given to any written comments which are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C.

#### Regulatory Flexibility Act and Executive Order 12866

The proposed amendments would revise the Customs Regulations concerning the declaration, entry, assessment of duty and processing of petitions for relief from duty, for subject vessels under the vessel repair statute. The proposed amendments are intended to accurately reflect the existing statutory authority, as well as legal and policy determinations made in this regard as the result of judicial decisions and administrative enforcement experience. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed

amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor does this document meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

#### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has previously been reviewed and approved by the Office of Management and Budget (OMB) under OMB control number 1515-0082. This rule does not propose any substantive changes to the existing approved information collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Drafting Information. The principal author of this document was Larry L. Burton, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

#### List of Subjects

##### 19 CFR Part 4

Customs duties and inspection, Declarations, Entry, Repairs, Reporting and recordkeeping requirements, Vessels.

##### 19 CFR Part 159

Customs duties and inspection, Entry procedures.

#### Proposed Amendments to the Regulations

It is proposed to amend parts 4 and 159, Customs Regulations (19 CFR parts 4 and 159), as set forth below.

#### PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4, and the specific authority citation for § 4.14, would continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;  
\* \* \* \* \*

Section 4.14 also issued under 19 U.S.C. 1466, 1498;  
\* \* \* \* \*

2. It is proposed to revise § 4.14 to read as follows:

##### § 4.14 Equipment purchases by, and repairs to, American vessels.

(a) *General provisions and applicability.* Under section 466, Tariff

Act of 1930, as amended (19 U.S.C. 1466), purchases for or repairs made to certain vessels while they are outside the United States, including repairs made while those vessels are on the high seas, are subject to declaration, entry and payment of ad valorem duty. These requirements are effective upon the first arrival of affected vessels in the United States or Puerto Rico. The vessels subject to these requirements include those documented under U.S. law for the foreign or coastwise trades, as well as those which, although not documented under U.S. law, exhibit an intent to engage in those trades under Customs interpretations. Duty is based on actual foreign cost. This includes the original foreign purchase price of articles which have been imported into the United States and are later sent abroad for use. For the purposes of this section, expenditures made in American Samoa, the Guantanamo Bay Naval Station, Guam, Puerto Rico, or the U.S. Virgin Islands are considered to have been made in the United States, and are not subject to declaration, entry or duty. Under separate provisions of law, the cost of labor performed, and of parts and materials produced and purchased in Israel are not subject to duty under the vessel repair statute. Additionally, expenditures made in Canada or in Mexico are no longer subject to any vessel repair duties. Even in the absence of any liability for duty, it is still required that all repairs and purchases, including those made in Canada, Mexico, and Israel, be declared and entered.

(b) *Applicability to specific types of vessels.*—(1) *Fishing vessels.* As provided in § 4.15, vessels documented under U.S. law with a fishery endorsement are subject to vessel repair duties and must file a declaration and entry, or their electronic equivalent, for covered foreign expenditures upon their first post-expenditure arrival in the United States. Undocumented American fishing vessels which are repaired, or for which parts, nets or equipment are purchased outside the U.S., must also file and pay duty.

(2) *Government-owned or chartered vessels.* Vessels normally subject to the vessel repair statute because of documentation or intended use are not excused from duty liability merely because they are either owned or chartered by the U.S. Government.

(3) *Vessels away continuously for two years or longer.* Vessels normally subject to the vessel repair statute, which remain continuously outside the U.S. for two years or longer, are liable for duty on any fish nets and netting purchased at any time during the entire

absence. Other than for nets and netting, such vessels are liable for duty only on those expenditures which are made during the first six months of a continuous absence of two years or more from the United States. The single exception to this rule applies to vessels designed and used primarily for transporting passengers and merchandise which specifically depart the United States in order to obtain repairs or to purchase equipment. These vessels remain fully liable for duty regardless of the duration of their absence from the United States. Even though some costs may not be dutiable, all repairs, materials, parts and equipment-related expenditures must be declared and entered.

(c) *Estimated duty deposit and bond requirements.* Generally, the person authorized to submit a vessel repair declaration and entry must either deposit or transmit estimated duties or file a bond on Customs Form 301 at the first United States port of arrival before the vessel will be permitted to depart from that port. A bond of sufficient value to cover all potential duty on the foreign repairs and purchases which must be submitted at the port of arrival shall be forwarded by Customs at that port to the appropriate VRU port of entry, as defined in paragraph (g) of this section. The amount of the bond is within the discretion of Customs at the port of arrival since claims for reduction in duty liability are subject to the consideration of evidence by Customs. Customs officials at the port of arrival may consult the appropriate VRU port of entry or the staff of the Entry Procedures and Carriers Branch in Customs Headquarters in setting sufficient bond amounts. These duty, deposit, and bond requirements do not apply to vessels which are owned or chartered by the United States Government and are actually being operated by employees of an agency of the Government. If operated by a private party for a Federal agency under terms whereby the agency remains liable under the contract for payment of the duty, there must be a deposit or a bond filed in an amount adequate to cover the estimated duty.

(d) *Declaration required.* When a vessel subject to this section first arrives in the United States following a foreign voyage, the owner, master, or authorized agent must submit a vessel repair declaration on Customs Form 226, a dual-use form used both for declaration and entry purposes, or must transmit its electronic equivalent. The declaration must be ready for presentation in the event that a Customs officer boards the vessel. If no foreign repair-related

expenses were incurred, that fact must be reported either on the declaration form or by approved electronic means. The Customs port of arrival receiving either a positive or negative vessel repair declaration or electronic equivalent shall immediately forward it to the appropriate VRU port of entry.

(e) *Entry required.* The owner, master, or authorized representative of the owner of any vessel subject to this section for which a positive declaration has been filed must submit a vessel repair entry on Customs Form 226 or transmit its electronic equivalent. The entry must show all foreign voyage expenditures for equipment, parts of equipment, repair parts, materials and labor. The entry submission must indicate whether it provides a complete or incomplete account of covered expenditures. The entry must be presented or electronically transmitted by the vessel operator to the appropriate VRU port of entry as identified in paragraph (g) of this section, so that it is received within ten calendar days after arrival of the vessel. Duty refund or remission claims should be made generally as part of the initial submission, and evidence must later be provided to support those claims. Failure to submit full supporting evidence of cost within stated time limits, including any extensions granted under this section, is considered to be a failure to enter.

(f) *Time limit for submitting evidence of cost.* A complete vessel repair entry must be supported by evidence showing the cost of each item entered. If the entry is incomplete when submitted, evidence to make it complete must be received by the appropriate VRU port of entry within 90 calendar days from the date of vessel arrival. That evidence must include either the final cost of repairs or, if the operator submits acceptable evidence that final cost information is not yet available, initial or interim cost estimates given prior to or after the work was authorized by the operator. The proper VRU port of entry may grant one 30-day extension of time to submit final cost evidence if a satisfactory written explanation of the need for an extension is received before the expiration of the original 90-day submission period. All extensions will be issued in writing. Inadequate, vague, or open-ended requests will not be granted. Questions as to whether an extension should be granted may be referred to the Entry Procedures and Carriers Branch in Customs Headquarters by the VRU ports of entry. Any request for an extension beyond a 30-day grant issued by a VRU must be submitted through that unit to the Entry

Procedures and Carriers Branch, Customs Headquarters. In the event that all cost evidence is not furnished within the specified time limit, or is of doubtful authenticity, the VRU may refer the matter to the Customs Office of Investigations to begin procedures to obtain the needed evidence. That office may also investigate the reason for a failure to file or for an untimely submission. Unexplained or unjustified delays in providing Customs with sufficient information to properly determine duty may result in penalty action as specified in paragraph (j) of this section.

(g) *Location and jurisdiction of vessel repair unit ports of entry.* Vessel Repair Units (VRUs) are considered to be the ports of entry for vessel repair declarations and entries, and are located in New York, New York; New Orleans, Louisiana; and San Francisco, California. The New York unit processes vessel repair entries received from ports of arrival on the Great Lakes and the Atlantic Coast of the United States, north of, but not including, Norfolk, Virginia. The New Orleans unit processes vessel repair entries received from ports of arrival on the Atlantic Coast from Norfolk, Virginia, southward, and from all United States ports of arrival on the Gulf of Mexico including ports in Puerto Rico. The San Francisco unit processes vessel repair entries received from all ports of entry on the Pacific Coast including those in Alaska and Hawaii.

(h) *Justifications for refund or remission of duty.* Vessel repair duties may be refunded or remitted. Refunds relate to claims made under paragraph (a) of the vessel repair statute (19 U.S.C. 1466(a)), and remissions relate to claims made under paragraphs (d), (e) and (h) of the vessel repair statute (19 U.S.C. 1466(d), (e) and (h)).

(1) *Refund of duty.* Duty is refunded when it is determined that a foreign shipyard operation or expenditure is not considered to be a repair or purchase within the terms of the vessel repair statute, or as determined under judicial or administrative interpretations.

(2) *Remission of duty.* Duty is remitted under paragraph (d) of the vessel repair statute (19 U.S.C. 1466(d)) when it is determined that a foreign shipyard operation or expenditure involves any of the following:

(i) *Stress of weather or other casualty.* Duty will be remitted if good and sufficient evidence supports a finding that the vessel, while in the regular course of its voyage, was forced by stress of weather or other casualty, while outside the United States, to purchase equipment or make repairs

necessary to secure the safety and seaworthiness of the vessel in order to enable it to reach its port of destination in the United States. Only duty on the cost of the minimal repairs needed for safety and seaworthiness is subject to remission. For the purposes of this section, a "casualty" does not include any purchase or repair made necessary by ordinary wear and tear, but does include the failure of a part to function if it is proven that the specific part was repaired, serviced, or replaced in the United States immediately before the start of the voyage in question, and then failed within six months of that date.

(ii) *U.S. parts installed by regular crew or residents.* Duty will be remitted if equipment, parts of equipment, repair parts, or materials used on a vessel were manufactured or produced domestically and were purchased in the United States by the owner of the vessel. It is also required under the statute that residents of the United States or members of the regular crew of the vessel perform any necessary labor in connection with such installation.

(iii) *Dunnage.* Duty will be remitted if any equipment, equipment parts, materials, or labor were used for the purpose of providing dunnage for the packing or shoring of cargo, for erecting temporary bulkheads or other similar devices for the control of bulk cargo, or for temporarily preparing tanks for carrying liquid cargoes.

(i) *General procedures for seeking refund or remission.*—(1) *Applications for relief.* Vessel repair duty will not be refunded or remitted unless an Application for Relief is filed with Customs; duty will not be refunded or remitted based merely on a duty refund or remission claim made at time of entry pursuant to paragraph (e) of this section. An Application for Relief is not required to be presented in any particular format, but if filed it must clearly present justification for granting relief. An Application must also state that all repair operations performed aboard a vessel during the one-year period prior to the current submission have been declared and entered. A valid Application is required to be supported by complete evidence as detailed in this section. The deadline for receipt of an Application and supporting evidence is 90 days from the date that the vessel first arrived in the United States following foreign operations. Applications must be addressed and submitted by the vessel operator to the appropriate VRU port of entry and will be decided in that unit. The VRUs may seek the advice of the Entry Procedures and Carriers Branch in Customs Headquarters with regard to any specific

item or issue which has not been addressed by clear precedent. If no Application is filed or if a submission which does not meet the minimal standards of an Application for Relief is received, the duty amount will be determined without regard to issues of refund or remission. Each Application for Relief must include copies of:

(i) Itemized bills, receipts, and invoices for items shown in paragraph (e) of this section. The cost of items for which refund or remission is being sought must be segregated from the cost of the other items listed in the vessel repair entry;

(ii) Photocopies of relevant parts of vessel logs, as well as of any classification society reports which detail damage and remedies;

(iii) A certification by the senior officer with personal knowledge of all relevant circumstances relating to casualty damage (time, place, cause, and nature of damage);

(iv) A certification by the senior officer with personal knowledge of all relevant circumstances relating to foreign repair expenditures (time, place, and nature of purchases and work performed);

(v) A certification by the master that casualty-related expenditures were the minimum necessary to ensure the safety and seaworthiness of the vessel in reaching its United States port of destination; and

(vi) Any permits or other documents filed with or issued by any other United States Government Agency regarding the operation of the vessel.

(2) *Additional evidence.* In addition, copies of any other evidence and documents the applicant may wish to provide as evidentiary support may be submitted. Elements of applications which are not supported by required evidentiary elements will be considered fully dutiable. All documents submitted must be certified by the master, owner, or authorized corporate officer to be originals or copies of originals, and if in a foreign language they must be accompanied by an English translation, certified by the translator to be accurate. Upon receipt of an Application for Relief by the VRU within the prescribed time limits, a determination of duties owed will be made. After a decision is made on an Application for Relief by a VRU, the Applicant will be notified of the right to protest any perceived excessive charge or exaction.

(3) *Administrative protest.* Following the determination of duty owing on a vessel repair entry, a protest may be filed as the only and final administrative appeal. The procedures and time limits applicable to protests

filed in connection with vessel repair entries are the same as those provided in part 174 of this chapter.

(j) *Penalties.*—(1) *Failure to report, enter, or pay duty.* It is a violation of the vessel repair statute if the owner or master of a vessel subject to this section willfully or knowingly neglects or fails to report, make entry, and pay duties as required; makes any false statements regarding purchases or repairs described in this section without reasonable cause to believe the truth of the statements; or aids or procures any false statements regarding any material matter without reasonable cause to believe the truth of the statement. If a violation occurs, the vessel, its tackle, apparel, and furniture, or a monetary amount up to their value as determined by Customs, is subject to seizure and forfeiture and is recoverable from the owner (see § 162.72 of this chapter).

(2) *False declaration.* If any person required to file a vessel repair declaration or entry under this section, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement, that person shall be subject to the criminal penalties provided for in 18 U.S.C. 1001.

## PART 159—LIQUIDATION OF DUTIES

1. The authority citation for part 159 is revised to read as follows:

**Authority:** 19 U.S.C. 66, 1500, 1504, 1624. Subpart C also issued under 31 U.S.C. 5151.

Sections 159.4, 159.5, and 159.21 also issued under 19 U.S.C. 1315;

Section 159.6 also issued under 19 U.S.C. 1321, 1505;

Section 159.7 also issued under 19 U.S.C. 1557;

Section 159.22 also issued under 19 U.S.C. 1507;

Section 159.44 also issued under 15 U.S.C. 73, 74;

Section 159.46 also issued under 19 U.S.C. 1304;

Section 159.55 also issued under 19 U.S.C. 1558;

Section 159.57 also issued under 19 U.S.C. 1516.

### § 159.11 [Amended]

2. It is proposed to amend § 159.11(b) by removing the phrase, "vessel repair entries or".

Approved: March 12, 1999.

**Raymond W. Kelly,**

*Commissioner of Customs.*

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 99-9946 Filed 4-20-99; 8:45 am]

BILLING CODE 4820-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 244

[FRA Docket No. 1999-4985, Notice No. 3]

### Surface Transportation Board

#### 49 CFR Part 1106

[STB Ex Parte No. 574]

RIN 2130-AB24

### Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, Acquisitions of Control, and Start Up Operations; and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control

**AGENCIES:** Federal Railroad Administration, DOT, Surface Transportation Board.

**ACTION:** Notice of proposed rulemaking; date and location of public hearing; extension of comment period.

**SUMMARY:** By notice of proposed rulemaking (NPRM) published on December 31, 1998 (63 FR 72225), the Federal Railroad Administration (FRA) and the Surface Transportation Board (STB or Board) proposed a joint rule establishing procedures for developing and implementing safety integration plans by railroads proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another railroad. In that notice, the agencies announced that

they did not intend to convene a public hearing on the rulemaking action, but invited interested persons to request a public hearing to enable them to comment on issues addressed in the NPRM. One commenter timely filed a request for a public hearing, and pursuant to that request, FRA and the Board have agreed to convene a public hearing as an opportunity for oral comment. Consistent with this decision, FRA and the STB also will extend the comment period to the date of the public hearing to solicit additional written comments on the respective proposed rules. The agencies request interested persons not to re-submit comments or arguments advanced during the first comment period.

**DATES:** Comments: Submit written comments on or before May 4, 1999.

**Public Hearing:** The public hearing will be held on Tuesday, May 4, 1999, beginning at 9:00 a.m., in Washington, DC. Any person wishing to participate in the public hearing should notify *both* the FRA Docket Clerk ((202) 493-6030 or by mail) and the STB Secretary ((202) 565-1650 or by mail) at least five working days before the date of the hearing, and submit 10 copies of the oral statement that he or she intends to make at the hearing. The notification should identify the party the person represents and the particular subject(s) the person plans to address. The notification should also provide the FRA Docket Clerk and the STB Secretary with the participant's mailing address. FRA and the Board reserve the right to limit participation in the hearing by persons who fail to provide such notification.

**ADDRESSES:** (1) *FRA Docket Clerk:* Submit one copy of the notification identifying the docket number to the Department of Transportation Central Docket Management Facility located in room PL-401 at the Plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590. All docket material on the FRA rule will be available for inspection at this address

and on the Internet at <http://dms.dot.gov>. (Docket hours at the Nassif Building are Monday-Friday, 10 a.m. to 5 p.m., excluding Federal holidays.)

(2) *The STB Secretary:* Send an original and 10 paper copies referring to STB Ex Parte No. 574 to Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, NW, Washington DC 20423. In addition to paper copies, each party must also submit its respective notification and pleadings to the Board on a 3.5-inch diskette formatted for WordPerfect 7.0 (or in a format readily convertible into WordPerfect 7.0). All such pleadings will be posted on the Board's website (<http://www.stb.dot.gov>).

(3) *Public Hearing:* The venue for the public hearing scheduled for May 4, 1999, will be at the Nassif Building, 400 Seventh Street, S.W., Room 2230, in Washington DC.

(4) *Written Comments:* The procedures for filing written comments with FRA and the Board are the same as provided in the NPRM published on December 31, 1998. 63 FR 72225 (December 31, 1998).

**FOR FURTHER INFORMATION CONTACT:** Jon Kaplan, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mailstop 10, Washington, DC 20590 (telephone: (202) 493-6053); or Evelyn G. Kitay, Office of the General Counsel, STB, 1925 K Street, NW, Washington, DC 20423 (telephone: (202) 565-1563) [TDD for the hearing impaired: (202) 565-1695].

Issued in Washington, DC, on April 12, 1999.

**Jolene Molitoris,**

*Federal Railroad Administrator.*

Decided: April 7, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 99-9798 Filed 4-20-99; 8:45 am]

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