§ 219.11(c)(2) is overbroad. That provision requires that employees in certain safety-sensitive functions consent to the release of laboratory test results, conducted by or for a medical facility, on blood or urine samples taken by the medical facility subject to mandatory post-accident testing (Subpart C) or reasonable cause testing (Subpart D). The objective of the provision was to provide FRA with access to the results of laboratory tests undertaken by medical facilities to ascertain the presence of alcohol and other drugs. The objective was not to permit FRA to have access to other test results which may be obtained from blood or urine samples. The technical amendment merely makes this intent explicit on the face of the rule.

Second, the BLE Petition states that, in the petitioner's view, § 219.303(d)(2) could be read to excuse one of the two breath tests contemplated by § 219.303(a) in a case where a screening test was used. Section 219.303(a) describes detailed safeguards, including use of approved devices and trained and qualified operators. In FRA's judgment, the provision as presently worded requires that two "evidentiary" tests must be done in appropriate cases (where the first such "evidentiary" test is positive). The screening test cannot substitute for either. FRA has not encountered significant misunderstanding during the industry seminars and many other contacts with employee representatives and railroad representatives since the issuance of the final rule.

However, effective presentation is an important attribute of any rule of law, whether statutory or regulatory. Accordingly, FRA has endeavored to reformulate that provision in a way that will make abundantly clear to all readers that a screening test is in no way a substitute for evidentiary-quality testing, using approved equipment and other safeguards. In the case where both the screening test and the first evidential test are positive, a second evidential-quality test is required. The point originally intended by the revised provision is retained—i.e., the 15-minute period of § 219.303(a)(5) is satisfied if the second test that meets the criteria of paragraph (a) is conducted at least 15 minutes after the screening test. The purpose of the 15-minute requirement is to permit breath alcohol to dissipate. The interval between the two evidential tests is, by itself, not significant.

Notice and Public Procedure

FRA determines that confusion could result from the alleged imprecision of the existing rule which becomes effective on November 1, 1985 and since this amendment imposes no additional burden on any person FRA concludes that notice and comment are impractical and unnecessary in this instance. In addition, FRA determines that there is good cause for making these technical changes effective on the effective date of the new Part 219, which is less than 30 days after publication of this notice in the Federal Register, since they are clarifying in nature and will impose no new substantive burden on any person.

Regulatory Impact

This technical amendment to the final rule has been evaluated in accordance with existing regulatory policies and is considered to be non-major under Executive Order 12291. Although the final rule in this proceeding was deemed to be significant under DOT policies and procedures (44 FR 11034), this amendment is not deemed to be significant. This amendment contains only minor technical changes intended to clarify the rule published on August 2, 1985 and will have no economic impact.

This amendment will not increase the economic burden of the existing regulation for any party since it only clarifies the present rules and does not substantively alter them. Accordingly, it is certified that this amendment will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). In addition, this amendment does not contain directly or indirectly provisions concerning the collection of information that are subject to the Paper Work Reduction Act of 1980 (5 U.S.C. 3501 et seq.).

List of Subjects in 49 CFR Part 219

Railroad safety. Control of alcohol and drug use.

PART 219—[AMENDED]

In consideration of the foregoing, Part 219, Title 49, Code of Federal Regulations is amended as follows:

1. The authority for Part 219 continues to read as follows:


2. Section 219.11 is amended by revising paragraph (c)(2) as follows. Paragraph (c) introductory text is shown for user convenience only.

§ 219.11 Consent required; implied.
ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) revises its special rule in 50 CFR 17.42(a), regulating commercial activities with the hides, meat and other parts of lawfully taken American alligators (Alligator mississippiensis), to: (1) Delete the requirement that State-licensed alligator farmers also obtain a Federal Alligator Farmer Permit; (2) allow the export of meat and other parts such as skulls and teeth; (3) improve the hide tagging system; and (4) delete a redundant requirement. The final rule is not different from the proposed rule.

EFFECTIVE DATE: This rule is effective on October 31, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Larry LaRochelle, Staff Biologist, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201 (703/235-1903).

SUPPLEMENTARY INFORMATION:

I. Background

On October 23, 1984 (49 FR 42594), the Service published a Proposed Rule to change its special rule in 50 CFR 17.42(a), regulating commercial activities with the hides, meat and other parts of lawfully taken American alligators (Alligator mississippiensis), to: (1) Delete the requirement that State-licensed alligator farmers also obtain a Federal Alligator Farmer Permit; (2) allow the export of meat and other parts such as skulls and teeth; (3) improve the hide tagging system; and (4) delete a redundant requirement. The October 23, 1984, notice discussed the need, purpose and details of the Services, proposal and invited comments from interested parties until November 23, 1984.

The Service received comments from one alligator farmers association and one State wildlife agency. Both supported all parts of the Service’s proposal. Significant comments pertinent to the Service’s Proposed Rule are summarized and discussed below together with the Service’s responses.

II. Comments

1. Delete the requirement that State-licensed alligator farmers also obtain a Federal Alligator Farmers Permit. Both commenters agreed with this proposal noting that the Federal permit is a duplication of State permits requiring additional marking, packaging and shipping requirements for these items. The Service agrees with these comments and so amends the rule. It should be pointed out, however, that although the export of meat and parts will in fact be allowed by this final rule under authority of the U.S. Endangered Species Act and 50 CFR 17.42(a), the alligator is also listed on Appendix II of the Convention on International Trade in Endangered Species (CITES). As such, the import, or reexport of the specimen or readily-recognizable, parts, products or derivatives of species so listed must also meet the criteria set forth by CITES and 50 CFR Part 23.

2. Delete a redundant requirement. Section 17.42(a)(2)(i)(D)(1)-(5) unnecessarily repeats 17.42(a)(2)(i)(C). No comments were received on this point. The Service so amends the rule.

Required Determinations

National Environmental Policy Act

An Environmental Assessment (EA) has been prepared and is available to the public at the Federal Wildlife Permit Office at the address listed above. Based upon the information considered in the EA, a decision has been made that the preparation of an Environmental Impact Statement is not required for this action.

Information Collection

The information collection requirements associated with fish and wildlife permits covered by this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018-0022.


List of Subjects

50 CFR Part 13

Administrative practice and procedures.

50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, the Service amends Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

1. The authority citation for Part 13 continues to read as follows:


§ 13.12 [Amended]

2. Amend § 13.12(b) by removing “American alligator—American alligator in captivity... 17.42(a)” from the list of permits.
PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

3. The authority citation for Part 17 continues to read as follows:


4. Revise § 17.42(a)(2)(i)(C) introductory text and (a)(2)(i)(C)(3) to read as follows:

§ 17.42 Special rules—reptiles.

(a) * * *
   (2) * * *
   (i) * *
   (C) Any person may take an American alligator in the wild wherever listed under § 17.11 as Threatened—Similarity of Appearance [T(S/A)], or one which was born in captivity or lawfully placed in captivity, in accordance with the laws and regulations of the State of taking, subject to the following conditions:
   * * * * *
   (3) The State of taking requires hides to be tagged by State officials, or under State supervision, with a Service-approved tag, a sample of which must be on file in the Federal Wildlife Permit Office (FWPO), that:
   (i) Is made of permanent material;
   (ii) Shows State of origin, year of take, species, and is serially unique; and,
   (iii) Cannot be opened and reused once attached to the hide.
   * * * * *


7. Revise § 17.42(a)(2)(i)(D) to read as follows:

§ 17.42 Special rules—reptiles.

(a) * * *
   (2) * * *
   (i) * *
   (D) When an American alligator is taken by State or Federal officials in accordance with paragraphs (a)(2)(i) (A) or (B) of this section, the hide, meat, and other parts may be sold or transferred by their respective agencies, subject to the conditions of paragraphs (a)(2)(i)(C)(1)-(4) of the section.
   * * * * *

8. Revise § 17.42(a)(2)(iii) to read as follows:

§ 17.42 Special rules—reptiles.

(a) * * *
   (2) * * *
   (iii) Import or Export. No person may import or export any American alligator, except that hides, manufactured products, meat or other parts meeting the requirements of paragraph (a)(2)(i)(C) may be imported or exported in accordance with Part 23 of this chapter.
   * * * * *

9. Revise § 17.42(a)(2)(iv)(B) to read as follows:

§ 17.42 Special rules—reptiles.

(a) * * *
   (2) * * *
   (iv) * *
   (B) Any meat or other part, except the hide, from a lawfully taken American alligator which is sold or otherwise transferred in accordance with paragraphs (a)(2)(i)(C)(2), (3) and (4) of this section and the laws and regulations of the State of taking and the State in which the sale or transfer occurs may be delivered, received, carried, transported, or shipped in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, and may be sold or offered for sale in interstate or foreign commerce and may be exported in accordance with Part 23 of this chapter.
   * * * * *


Dated: October 9, 1985.

P. Daniel Smith,
Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

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