

make the required showing of if irreparable harm.<sup>15</sup>

8. *Harm to Others.* Second, IMSA/IAFC allege that the stay will benefit, not harm, other Public Safety Radio Service parties because the Commission's grant of this request will aid in the establishment of a fair and safe frequency coordination process, avoid the implementation of a consolidation plan that conflicts with the intent and direction of the Advisory Committee report, and avert the disruption of dismembering and reconstructing the finalized consolidation plan should the plan prove unworkable in light of the Advisory Committee's recommendations.<sup>16</sup> Further, IMSA/IAFC maintain that non-public safety radio services will remain unaffected as this request for stay does not relate to non-public safety radio services.

9. As we have stated, we are not faced with the circumstance of proceeding in light of contrary recommendations of the Advisory Committee. Those recommendations have not been formulated and in fact, both the Advisory Committee and Commission would benefit by the proposals and comments of industry of how best to accomplish the consolidation of services. Significant potential for harm to others in the PLMR community will accrue if we were to impose a stay in the consolidation of the Public Safety Radio Services. In the *Report and Order*, the Commission noted that it sought a consensus from all users in the PLMR community in developing a consolidation plan. The Commission recognized that this action represented a significant change for all PLMR services. The Commission viewed consolidation as a unified effort by the PLMR community to maximize the effective and efficient operations of the private services. The *Report and Order* emphasized the importance of developing a consolidation plan for all of the PLMR services. A specific comprehensive consolidation plan must include clear guidelines for the structure of the Public Safety Radio Services. Should the public safety community not participate in discussions to develop a consensus for consolidating the radio services, the PLMR community efforts to achieve more efficient and flexible spectrum use could be unnecessarily delayed and

detrimentally affected. In short, removing a specific class of land mobile services from the consolidation planning process would significantly and adversely affect the entire "Refarming" initiative.

10. *Public Interest.* Third, IMSA/IAFC argue that it is in the public interest to use the Advisory Committee to its maximum potential, and not to risk conflicting directives from the Advisory Committee and the rulemaking proceeding concerning the consolidation of the Public Safety Radio Services.<sup>17</sup> Moreover, these parties state that the delay resulting from this request will be minimal. Again, the Commission is not at a point where it risks even a potential conflict with a recommendation of the Advisory Committee. The Commission is committed to a process that provides the Advisory Committee an opportunity to examine the range of issues facing public safety communications. Our pervading interest is that proposals and comments on the consolidation of services be submitted so that the Commission can continue its efforts in implementing the Refarming initiative, which includes the benefit of any Advisory Committee recommendation addressing the consolidation of services. A stay would likely delay these efforts and be contrary to the public interest.

11. *Conclusion.* For these reasons, and pursuant to § 1.43 of the Commission's rules, the Requests for Stay filed by the Association of Public-Safety Communications Officials-International, Inc., the International Municipal Signal Association and the International Association of Fire Chiefs, and the Public Safety Communications Council are denied.

12. The deadline for filing a consensus plan for consolidation remains November 20, 1995. We will consider, however, the views of the petitioners and the Advisory Committee in conjunction with the recommendations submitted November 20th, prior to issuing a final order on consolidation of the PLMR services.

Federal Communications Commission.

Gerald P. Vaughan,

*Deputy Chief, Wireless Telecommunications Bureau.*

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**BILLING CODE 6712-01-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 219

[Docket No. RSOR-6; Notice No. 43]

RIN 2130-AA81

#### Random Drug Testing: Announcement of 1996 Minimum Testing Rate; Designation of New Laboratory for Post-Accident Toxicology Testing

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Final rule and notice of determination.

**SUMMARY:** Using data from Management Information System (MIS) annual reports, FRA has calculated that the rail industry random drug testing positive rate for 1994 was 0.808 per cent. Since the industry-wide random drug positive rate continues to be below 1.0 per cent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 1996 through December 31, 1996 will remain at 25 percent of covered railroad employees.

This rule also announces that FRA intends to award a contract to Northwest Toxicology, Inc. (Northwest), to conduct post-accident toxicological analysis, effective December 1, 1995.

**DATES:** This final rule is effective December 1, 1995.

The minimum annual random drug testing rate is 25 percent of covered railroad employees for the period January 1, 1996 through December 31, 1996.

**ADDRESSES:** Any petition for reconsideration should be submitted to the Docket Clerk, Docket No. RSOR-6, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., Room 8201, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Operating Practices Division, Federal Railroad Administration, 400 7th Street, SW., Room 8314, Washington, DC 20590, (Telephone: (202) 366-0127) or James T. Schultz, Chief, Operating Practices Division, Office of Safety Enforcement, Federal Railroad Administration, 400 7th Street, SW., Room 8314, Washington, DC 20590, (Telephone: (202) 366-9178).

<sup>15</sup> "The most important of [the] factors is irreparable harm, without which other factors need not be considered." *In the Matter of Cincinnati Bell Telephone Company, Requests for Stay of Orders Finding Violations of the Commission's Rate of Return Prescriptions*, 8 FCC Rcd at 6710, note 23.

<sup>16</sup> Comments of IMSA/IAFC at 7.

<sup>17</sup> IMSA/IAFC comments at 8.

**SUPPLEMENTARY INFORMATION:****Administrator's Determination of 1996 Random Drug Testing Rate**

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug testing rates according to the rail industry's overall random drug positive rate, which is determined using annual railroad drug program data taken from FRA's Management Information System. Under this performance-based system, FRA will lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year. Each year, the Administrator will publish a Federal Register notice announcing the minimum random drug testing rate for the following year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent because 1992 and 1993 industry drug testing data indicated a random drug positive rate below 1.0 percent. In this rule, FRA announces that the minimum random drug testing rate will continue to be 25 per cent of covered railroad employees for the period January 1, 1996 through December 31, 1996, since the industry random positive rate for 1994 was 0.808 per cent.

FRA implemented a parallel performance-based system for random alcohol testing, which will not be fully implemented until January 1, 1996. Since FRA has less than one year of data, the current random alcohol minimum testing rate of 25 per cent will remain the same for 1996.

**Designation of New Post-Accident Testing Laboratory**

Beginning December 1, 1995, all post-accident toxicological analysis under Subpart C of Part 219 will be conducted by Northwest Toxicology, Inc. Therefore, FRA amends Appendix B to Part 219 to designate Northwest as its laboratory for post-accident toxicological testing.

This rule is being made effective in less than the 30 days from publication otherwise required by law so that FRA can immediately commence testing at its newly designated post-accident testing laboratory. FRA has therefore determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) to warrant an expedited effective date.

**Executive Order 12866 and DOT Regulatory Policies and Procedures**

FRA has determined that this rule is nonsignificant under Executive Order 12866 and under the Department of Transportation's Regulatory Policy and Procedures.

**The Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

**Federalism Impact**

This rule does 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. Therefore, in accordance with Executive Order 12612,

FRA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

**Paperwork Reduction Act**

FRA has determined that this rule does not significantly change any previously approved information collection requirements.

**List of Subjects in 49 CFR Part 219**

Alcohol and drug abuse, Railroad safety.

Accordingly, for the reasons stated above, FRA amends 49 CFR Part 219 as follows:

**PART 219—CONTROL OF ALCOHOL AND DRUG USE**

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

Authority: 49 U.S.C. 20103, 20107, 20111–20113, 20140, 21301 and 21304; Pub. L. 103–272 (July 5, 1994); and 49 CFR 1.49(m).

2. Appendix B to Part 219 is revised to read as follows:

**Appendix B to Part 219—Designation of Laboratory for Post-Accident Toxicological Testing**

The following laboratory is currently designated to conduct post-accident toxicological analysis under Subpart C of this part: Northwest Toxicology, Inc., 1141 E. 3900 S., Suite A-110, Salt Lake City, UT 84124, telephone: (801) 288–2431 (Day), (801) 483–3383 (Night/Weekend).

Issued in Washington, DC on November 22, 1995.

S. Mark Lindsey,

*Acting Administrator, Federal Railroad Administration.*

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