TABLE 2.—OZONE NONATTAINMENT MILESTONES—Continued

Date	Event
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 29, 2001.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(286) and (c)(287) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(286) [Reserved].

(287) New and amended regulations for the following APCD were submitted on November 8, 2001 by the Governor's designee.

(i) Incorporation by reference.

(A) Mojave Desert Air Quality Management District.

(1) Rule 1161 adopted on October 22, 2001.

* * * * *

[FR Doc. 01–32099 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001–11213, Notice No. 1]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2002

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2000 rail industry random testing positive rate was .20 percent for drugs and .79 percent for alcohol. Since the industry-wide random drug testing positive rate continues to be below 1.0 percent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2002 through December 31, 2002 will remain at 25 percent of covered railroad employees. Since the random alcohol

testing violation rate has remained below .5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002.

DATES: This notice is effective January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20005, (Telephone: (202) 493–6313).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2002 Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (see 49 CFR 219.602, 219.608).

Under this performance-based system, FRA may 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. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates). 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.

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 testing positive rate below 1.0 percent; since then FRA has continued to set the minimum random drug testing rate at 25 percent as the industry positive rate has consistently remained below 1.0 percent. In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002, since the industry random drug testing positive rate for 2001 was .20 percent.

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, if the industry-wide violation rate is less than 1.0 percent but greater than .5 percent, the rate will be 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than .5 percent for two calendar years while testing at a higher rate. Since the industry-wide violation rate for alcohol has remained below .5 percent for the last two years, FRA is maintaining the minimum random alcohol testing rate at 10 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002.

This notice sets the minimum random testing rates required next year. Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC, on December 21, 2001.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 01–32047 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[FRA Docket No. RSOR–9, Notice 13]

RIN 2130–AA74

Qualification and Certification of Locomotive Engineers; and Other Proceedings

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the definition of *filing* as used in the Federal Railroad Administration's rule on engineer certification in order to address recent, unavoidable postal delays. Due to terrorism, the Department of Transportation has implemented additional security procedures regarding mail delivery. The purpose of this interim final rule is to temporarily amend the regulation so that parties in adjudicatory proceedings pursuant to subpart E, Dispute Resolution Procedures of part 240 will not be prejudiced by circumstances beyond their control.

DATES: (1) *Effective Date:* This regulation is effective January 2, 2002.

(2) Written comments concerning this rule must be filed no later than March 4, 2002. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments should be submitted to the Docket Clerk, Department of Transportation Central Docket Management System (DMS), Nassif Building, Room Pl–401, 400 Seventh Street, SW., Washington, DC 20590 or, in accordance with the electronic standards and requirements, at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Alan H. Nagler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., RCC–11, Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6049).

SUPPLEMENTARY INFORMATION:

I. Background

In response to acts of terrorism beginning on September 11, 2001, the timely delivery of mail by the United States Postal Service (USPS) and private mail services were negatively impacted by the temporary closing of airline shipping facilities. About one month later, additional delays were caused by more acts of terrorism. On Tuesday, October 16, USPS mail delivery to the Department of Transportation's (DOT) headquarters buildings was halted and did not resume until November 2. DOT's mail was halted in order to take appropriate safety measures concerning the threat of bio-terrorism through mail handling and delivery. The safety of DOT employees and the public clearly override the short-term concern of timely mail delivery. Although it was necessary to establish new security systems, the delay in processing mail may have had unintended consequences.

As envisioned in a notice posted on DMS's website, FRA will take these mail delays into account with respect to rulemaking documents that have comment periods that may have closed before regular mail delivery resumed. FRA will do everything it can to ensure that comments that would otherwise have been received before the close of the comment period are considered. For example, FRA generally has authority to consider late-filed comments and will do so to the extent that it can; FRA will also take note of the postmark date for late-filed comments.

In contrast, federal agencies do not have authority to consider late-filed petitions in adjudicatory proceedings where the filing date requirements have