

Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under EO 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does involve technical standards. Therefore, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) apply. The NTTAA was signed into law on March 7, 1996 and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together federal agencies as well as state and local governments to achieve greater reliance on voluntary standards and decreased dependence on in-house standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: (a) Eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulation; (b) provide incentives and opportunities to establish standards that serve national needs; (c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and (d) further the policy of reliance upon the private sector to supply Government needs for goods and services. The Act requires that federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), wherever possible in lieu of creating proprietary, non-consensus standards.

Today’s action is compliant with the spirit and requirements of the NTTAA. Today’s action allows for the use of the ASTM International standard known as Standard E2247–08 and entitled

Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.”

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, entitled “Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629 (Feb. 16, 1994)), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. Today’s action does not change any regulatory requirements or impose any new requirements.

K. Congressional Review Act

The Congressional Review Act, 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. 5 U.S.C. 801 *et seq.* EPA submitted 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**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule is effective on March 23, 2009, unless EPA receives adverse comment by January 22, 2009.

List of Subjects in 40 CFR Part 312

Administrative practice and procedure, Hazardous substances.

Dated: December 17, 2008.

Stephen L. Johnson,
Administrator.

■ For the reasons set out in the preamble, title 40 chapter I of the code

of Federal Regulations is amended as follows:

■ Title 40 Chapter I is amended as follows:

PART 312—[AMENDED]

■ 1. The authority citation for part 312 continues to read as follows:

Authority: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(3)(B).

Subpart B—Definitions and References

■ 2. Section 312.11 is amended by adding paragraph (b) to read as follows:

§ 312.11 References.

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(b) The procedures of ASTM International Standard E2247–08 entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.” This standard is available from ASTM International at <http://www.astm.org>, 1–610–832–9585.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2672; MB Docket No. 08–199; RM–11486]

Television Broadcasting Services; Kearney, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Pappas Telecasting of Central Nebraska, L.P., permittee of station KHGI–DT, to substitute DTV channel 13 for post-transition DTV channel 36 at Kearney, Nebraska.

DATES: This rule is effective January 22, 2009.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s *Report and Order*, MB Docket No. 08–199, adopted December 5, 2008, and released December 8, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC’s Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document

will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Nebraska, is amended by adding DTV channel 13 and removing DTV channel 36 at Kearney.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8-30539 Filed 12-22-08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001-11213, Notice No. 12]

RIN 2130-AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2009

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2007 rail industry random testing positive rates were 0.56 percent for drugs and 0.18 percent for alcohol. Because the industry-wide random drug testing positive rate has remained below 1.0 percent for the last two years, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2009, through December 31, 2009, will remain at 25 percent of covered railroad employees. In addition, because the industry-wide random alcohol testing violation rate has remained below 0.5 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, 2009, through December 31, 2009.

DATES: This notice is effective upon publication.

FOR FURTHER INFORMATION CONTACT:

Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (telephone 202 493-6313); or Kathy Schnakenberg, FRA Alcohol/Drug Program Specialist, (telephone 816 561-2714).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2008 Minimum 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, 608.

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent of covered railroad employees whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at a 50 percent minimum rate. 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. If the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year, FRA will return the minimum random drug testing rate to 50 percent of covered railroad employees.

If the industry-wide random alcohol violation rate is less than 1.0 percent but greater than 0.5 percent, the minimum random alcohol testing rate will be 25 percent of covered railroad employees. FRA will raise the minimum random rate to 50 percent of covered railroad employees if the industry-wide random alcohol 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 of covered railroad employees whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at a higher rate.

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, 2009, through December 31, 2009, because the industry random drug testing positive rate was below 1.0 percent for the last two years (.056 in 2007 and .060 in 2006). The minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2009, through December 31, 2009, because the industry-wide violation rate for alcohol has remained below 0.5 percent for the last two years (.018 in 2007 and .013 in 2006). Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC on December 18, 2008.

Clifford C. Eby,
Administrator.

[FR Doc. E8-30541 Filed 12-22-08; 8:45 am]

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