

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 action 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 February 18, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 12, 2010.
Al Armendariz,
 Regional Administrator, Region 6.
 40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

- 1. The authority citation for part 81 continues to read as follows:
Authority: 42 U.S.C. 7401 *et seq.*
- 2. In § 81.344 the table entitled “Texas—Ozone (8-hour Standard)” is amended by revising the entries for Dallas-Fort Worth, TX and adding a new footnote 5 at the end of the table to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE (8-HOUR STANDARD)

| Designated area | Designation ^a | | Category/classification | |
|------------------------|--------------------------|---------------------|-------------------------|--------------------|
| | Date ¹ | Type | Date ¹ | Type |
| Dallas-Fort Worth, TX: | | | | |
| Collin County | | Nonattainment | (5) | Subpart 2/Serious. |
| Dallas County | | Nonattainment | (5) | Subpart 2/Serious. |
| Denton County | | Nonattainment | (5) | Subpart 2/Serious. |
| Ellis County | | Nonattainment | (5) | Subpart 2/Serious. |
| Johnson County | | Nonattainment | (5) | Subpart 2/Serious. |
| Kaufman County | | Nonattainment | (5) | Subpart 2/Serious. |
| Parker County | | Nonattainment | (5) | Subpart 2/Serious. |
| Rockwall County | | Nonattainment | (5) | Subpart 2/Serious. |
| Tarrant County | | Nonattainment | (5) | Subpart 2/Serious. |

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is June 15, 2004, unless otherwise noted.

⁵ Effective January 19, 2011.

[FR Doc. 2010–31885 Filed 12–17–10; 8:45 am]
 BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[EPA–HQ–RCRA–2003–0012; FRL–9240–5]

Technical Corrections to the Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action for six technical corrections to an alternative set of hazardous waste generator requirements known as the “Academic Laboratories rule” or “Subpart K” which is applicable to laboratories owned by eligible academic entities. These changes correct errors published in the Academic Laboratories Final rule, including omissions and redundancies, as well as remove an obsolete reference to the Performance Track program, which has been terminated. These technical corrections will improve the clarity of the Academic Laboratories rule.

DATES: This rule is effective on March 7, 2011 without further notice, unless EPA receives adverse comment by January 19, 2011. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the specific

amendments in this Direct Final rule for which the Agency received adverse comment will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2003–0012 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* rcra-docket@epa.gov.
- *Fax:* 202–566–9794.
- *Mail:* RCRA Docket, Environmental Protection Agency, *Mailcode:* 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-2003-0012. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information

about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/dockets>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is (202) 566-0270.

FOR FURTHER INFORMATION CONTACT: Kristin Fitzgerald, Office of Resource Conservation and Recovery, (5304P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (703) 308-8286; Fitzgerald.Kristin@epa.gov.

SUPPLEMENTARY INFORMATION:

Why is EPA using a direct final rule?

EPA is publishing this rule without a prior Proposed rule because we view this as a noncontroversial action and anticipate no adverse comment since the changes are minor and consistent

with the preamble language from the Final rule of December 1, 2008 (73 FR 72912). However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the Proposed rule to amend 40 CFR Part 262, Subpart K if adverse comments are received on this Direct Final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that those specific amendments in this Direct Final rule for which the Agency received adverse comment will not take effect, and the reason for such withdrawal. We would address all public comments in a subsequent Final rule based on the Proposed rule.

Does this action apply to me?

This Direct Final rule amends Subpart K of 40 CFR part 262. Entities potentially affected by this action are any of the following which generate hazardous waste in laboratories: (1) Colleges and universities; (2) non-profit research institutes that are either owned by or have a formal written affiliation agreement with a college or university; and (3) teaching hospitals that are either owned by or have a formal written affiliation agreement with a college or university.

NAICS CODES OF ENTITIES POTENTIALLY AFFECTED BY THIS DIRECT FINAL RULE

| NAICS codes | Description of NAICS code |
|---------------------------------|---|
| Colleges & Universities: | |
| 6112, 61121, 611210 | Junior Colleges. |
| 6113, 61131, 611310 | Colleges, Universities, and Professional Schools. |
| 6115, 61151 | Technical and Trade Schools. |
| 611519 | Other Technical and Trade Schools. |
| 61161, 611610 | Fine Arts Schools. |
| Teaching Hospitals: | |
| 54194, 541940 | Veterinary Services (Animal Hospitals). |
| 622 | Hospitals. |
| 6221, 62211, 622110 | General Medical and Surgical Hospitals. |
| 6222, 62221, 622210 | Psychiatric and Substance Abuse Hospitals. |
| 6223, 62231, 622310 | Specialty (except Psychiatric and Substance Abuse) Hospitals. |
| Non-profit Research Institutes: | |
| 5417, 54171, 541710 | Research and Development in the Physical, Engineering, and Life Sciences. |
| 54172, 541720 | Research and Development in the Social Sciences and Humanities. |

What should I consider as I prepare my comments for EPA?

A. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information

that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one

complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in

accordance with the procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

Preamble Outline

- I. Statutory Authority
- II. Explanation of Changes
- III. State Authorization
 - A. Applicability of Rules in Authorized States
 - B. Effect on State Authorization
- IV. Statutory and Executive Order Reviews
 - A. Regulatory Flexibility Act
 - B. Congressional Review Act

I. Statutory Authority

These regulations are promulgated under the authority of §§ 2002, 3001, 3002, and 3004 of the Solid Waste Disposal Act (SWDA) of 1970, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924.

II. Explanation of Changes

In today's Direct Final rule, there are six technical corrections to the final Academic Laboratories rule (also referred to as Subpart K), which was published in the **Federal Register** on December 1, 2008 (73 FR 72912).

The first two corrections in today's Direct Final rule are to the definition of "central accumulation area," which is in the section of the Academic Laboratories Final rule entitled Definitions for this subpart (§ 262.200). First, in the Academic Laboratories Final rule, the definition of "central

accumulation area" included a reference to the RCRA hazardous waste generator regulations for what are typically called "large quantity generators." The regulatory reference that was included in the Academic Laboratories Final rule was § 262.34(a). However, large quantity generators are also subject to § 262.34(b), if they accumulate hazardous waste for more than 90 days. In the Academic Laboratories Final rule, we inadvertently omitted that additional regulatory reference for large quantity generators; therefore, we are adding it in today's Direct Final rule.

Second, the definition of "central accumulation area" included a reference to the RCRA hazardous waste generator regulations for Performance Track members (specifically § 262.34(j) and (k)) in order to indicate that eligible academic entities that were Performance Track members were eligible to use the Academic Laboratories rule. However, after the Academic Laboratories rule became final, EPA's Performance Track program was terminated (74 FR 22742). Therefore, we are removing the parenthetical statement from the definition of "central accumulation area" that references the generator regulations specifically for Performance Track members, since the reference is now moot.

The third correction in today's Direct Final rule is in the section of the Academic Laboratories Final rule entitled *Labeling and management standards for containers of unwanted material in the laboratory* (§ 262.206). The regulatory text of the Final rule requires that containers of unwanted material be kept closed at all times, with three exceptions. One of the exceptions to the "closed container rule" is when adding, removing or consolidating unwanted material (§ 262.206(b)(3)(i)). In this instance, we use the term "consolidating" to mean combining the contents of several containers into a single container. This is often also referred to as "bulking."

In the preamble to the Final rule (see page 72937), we used the term "consolidation" in a different sense. In this instance, we used the term "consolidation" to mean moving containers of unwanted material from one laboratory to another laboratory, such that containers from multiple laboratories can be collected or "consolidated" to accumulate in one laboratory. Under this use of the term, the contents of the containers remain in their original containers, but the location of the containers changes. To eliminate confusion caused by using the same term in two different ways, in

§ 262.206(b)(3)(i), we are changing the term "consolidating" to "bulking."

The fourth correction in today's Direct Final rule is in the section of the Academic Laboratories Final rule entitled "Making the hazardous waste determination at an on-site interim status or permitted treatment, storage or disposal facility" (§ 262.212). Under paragraph (e)(1) of that section, if an unwanted material is a hazardous waste, an eligible academic entity must "Write the words "hazardous waste" on the container label that is affixed or attached to the container * * *" In a parenthetical following the quoted text, we inadvertently included the phrase "(or on the label that is affixed or attached to the container, if that is preferred)." This parenthetical is repetitive of the text immediately preceding it in paragraph (e)(1); therefore we are amending paragraph § 262.212(e)(1) to eliminate the redundant parenthetical phrase.

The last two corrections in today's Direct Final rule are in the "Laboratory management plan" (LMP) section of the Academic Laboratories rule (§ 262.214). Specifically, eligible academic entities that choose to opt into Subpart K are required to have a written LMP with two parts, and a total of nine elements. Part I of the LMP must contain two elements, while Part II of the LMP must contain seven elements.

The fifth correction in today's Direct Final rule is in the first element of Part I of the LMP (§ 262.214(a)(1)). The preamble to the Academic Laboratories Final rule makes it clear that we intended the first element of Part I of the LMP to include just two items, but the regulatory language inadvertently made it seem like those two items were just *part* of the requirement, rather than the *entire* requirement. Therefore, in § 262.214(a)(1), we are replacing the word "including" with the words "as follows" in order to make clear our intent. In fact, it is in the first element of *Part II* of the LMP (§ 262.214(b)(1)) that eligible academic entities must include their best intended practices for container labeling and management that go beyond the two items required in the first element of Part I.

The sixth correction in today's Direct Final rule is in the first element of Part II of the LMP (§ 262.214(b)(1)). When the Academic Laboratories rule was proposed (71 FR 29712), EPA did not specifically address in-line containers in the container management standards in § 262.206(b). In the Final rule, we added § 262.206(b)(3)(iii)(A) to the container management standards, which specifically addresses the management of in-line containers by allowing venting

of a container when it is necessary for the proper operation of laboratory equipment, such as with in-line collection of unwanted materials from high performance liquid chromatographs.

When § 262.206(b)(3)(iii)(A) was added, we neglected to eliminate the redundant requirement that addresses in-line containers in the first element of Part II of the LMP regulations (§ 262.214(b)(1)). Therefore, we are eliminating the redundant language today.

III. State Authorization

A. Applicability of Rules in Authorized States

Under § 3006 of RCRA, EPA may authorize a qualified State to administer its own hazardous waste program within the State in lieu of the Federal program. Following authorization, EPA retains enforcement authority under §§ 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA § 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their program only when EPA enacts Federal requirements that are more stringent or broader in scope than the existing Federal requirements. RCRA § 3009 allows the States to impose standards more stringent than those in the Federal program (see also 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal HSWA and non-HSWA regulations that are considered (1) less stringent or (2) neither more nor less stringent than previous Federal regulations.

B. Effect on State Authorization

These amendments are promulgated under non-HSWA RCRA authority. These non-HSWA amendments will be applicable on the effective date only in those States that do not have final authorization of their base RCRA programs. Authorized States are required to modify their programs only when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their program. This is a result of § 3009 of RCRA, which allows States to impose more stringent regulations than the Federal program. Today's amendments are considered to be neither more nor less stringent than the current standards. Therefore, authorized States, while not required to modify their programs to adopt the technical corrections discussed above, are strongly urged to adopt these technical corrections to avoid any confusion or misunderstanding by the regulated community and the public.

IV. Statutory and Executive Order Reviews

As explained above, this action makes technical corrections to the text of the Academic Laboratories rule but does not make any substantive change to the requirements of that rule. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866: Regulatory Planning and Review (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132: Federalism (64 FR 43255, August 10, 1999);

- Does not have Tribal implications as specified by Executive Order 13175: Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), because, as the rule does not make any substantive changes, it will not impose substantial direct costs on Tribal governments or preempt Tribal law;

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045: Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001);

- Does not involve technical standards; thus the requirements of § 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply; and

- Is one for which the EPA lacks the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's Direct Final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not create any new regulatory requirements, but rather makes technical corrections to Subpart K of the hazardous waste generator regulations. Although this Direct Final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities.

B. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 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 action 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).

List of Subjects in 40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Dated: December 13, 2010.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, Part 262 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

Subpart K—Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities

■ 2. Amend § 262.200 to revise the definition of "central accumulation area" to read as follows:

§ 262.200 Definitions for this subpart.

* * * * *

Central accumulation area means an on-site hazardous waste accumulation area subject to either § 262.34(a)–(b) of this part (large quantity generators) or § 262.34(d)–(f) of this part (small quantity generators). A central accumulation area at an eligible academic entity that chooses to be subject to this subpart must also comply with § 262.211 when accumulating unwanted material and/or hazardous waste.

* * * * *

■ 3. Amend § 262.206 to revise paragraph (b)(3)(i), to read as follows:

§ 262.206 Labeling and management standards for containers of unwanted material in the laboratory.

* * * * *

(b) * * *

(3) * * *

(i) When adding, removing or bulking unwanted material, or

* * * * *

■ 4. Amend § 262.212 to revise paragraph (e)(1), to read as follows:

§ 262.212 Making the hazardous waste determination at an on-site interim status or permitted treatment, storage or disposal facility.

* * * * *

(e) * * *

(1) Write the words "hazardous waste" on the container label that is affixed or attached to the container within 4 calendar days of arriving at the on-site interim status or permitted treatment, storage or disposal facility and before the hazardous waste may be removed from the on-site interim status or permitted treatment, storage or disposal facility, and

* * * * *

■ 5. Amend § 262.214 to revise paragraphs (a)(1) introductory text and (b)(1), to read as follows:

§ 262.214 Laboratory management plan.

* * * * *

(a) * * *

(1) Describe procedures for container labeling in accordance with § 262.206(a), as follows:

* * * * *

(b) * * *

(1) Describe its intended best practices for container labeling and management (see the required standards at § 262.206).

* * * * *

[FR Doc. 2010–31746 Filed 12–17–10; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001–11213, Notice No. 14]

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2011

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2009 rail industry random testing positive rates were .037 percent for drugs and .014 percent for alcohol. Because the industry-wide random drug testing positive rate has remained below 1.0 percent for the last two years of data, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2011, through December 31, 2011, 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, 2011, through December 31, 2011.

DATES: This notice of determination is effective December 20, 2010.

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 2011 Minimum Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced