

make the required showing of if irreparable harm.¹⁵

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.¹⁶ 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.¹⁷ 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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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).

¹⁵ "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.

¹⁶ Comments of IMSA/IAFC at 7.

¹⁷ IMSA/IAFC comments at 8.