

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).

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S. Mark Lindsey,

Acting Administrator, Federal Railroad Administration.

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