accounting method must be handled according to paragraphs (o)(2)(iii)(A)(*1*)(*i*) through (*iii*) of this section:

(*i*) In the year of transition from the pay-as-you-go method to accrual accounting for purposes of government contract cost accounting, the transition obligation shall be the excess of the accumulated PRB obligation over the fair value of plan assets determined in accordance with subparagraph (E) of this section; the fair value must be reduced by the prepayment credit as determined in accordance with subparagraph (o)(2)(iii)(F) of this subsection.

(*ii*) PRB cost attributable to the transition obligation assigned to the current year that is in excess of the amount assignable to accounting periods on the basis of a straight line amortization of the transition obligation over the average remaining working lives of active employees covered by the PRB plan or a 20-year period, whichever period is longer, is unallowable. However, if the plan is comprised of inactive participants only, the PRB cost attributable to the transition obligation assigned to the current year that is in excess of the amount assignable to accounting periods on a straight line amortization of the transition obligation over the average future life expectancy of the participants is unallowable.

(*iii*) For a plan that transitioned from pay-as-you-go to accrual accounting for government contract cost accounting prior to (Date of Final Rule), the unallowable amount of PRB cost attributable to the transition obligation amortization shall continue to be based on the cost principle in effect at the time of the transition until the original transition obligation schedule is fully amortized.

* * * * *

[FR Doc. 2012–11959 Filed 5–16–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. FRA–2010–0155]

RIN 2130–AC24

Control of Alcohol and Drug Use: Addition of Post-Accident Toxicological Testing for Non-Controlled Substances

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT)

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Since 1985, FRA has conducted post-accident toxicological testing (post-accident testing) on blood, urine, and, if an employee is deceased, tissue samples from railroad employees involved in serious train accidents. If an accident qualifies for post-accident testing, FRA routinely conducts tests for alcohol, marijuana, cocaine, phencyclidine (PCP), and certain amphetamines, opiates, barbiturates, and benzodiazepines. FRA is proposing to add certain potentially impairing non-controlled substances to its standard post-accident testing panel because FRA's research indicates that use of prescription and over-the-counter (OTC) drugs, most of which are non-controlled substances, is prevalent among railroad employees.

DATES: Submit comments on or before July 16, 2012.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2010–0155 may be submitted by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. DOT, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information. Please see the Privacy Act heading in the ''Supplementary Information'' section of this document for Privacy Act information related to any submitted comments or materials.

FOR FURTHER INFORMATION CONTACT: For program and technical issues, contact Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–493–6313), *lamar.allen@dot.gov.* For legal issues, contact Patricia V. Sun, Trial Attorney, Office of Chief Counsel, Mail Stop 10, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–493–6060), *patricia.sun@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Since 1985, as part of its accident investigation program, FRA has conducted post-accident alcohol and drug tests on railroad employees who have been involved in serious train accidents (50 FR 31508, August 2, 1985). If an accident meets FRA's criteria for post-accident testing (*see* 49 CFR 219.201), FRA conducts tests for alcohol and for certain drugs classified as controlled substances under the Controlled Substances Act (CSA), Title II of the Comprehensive Drug Abuse Prevention Substances Act of 1970 (CSA, 21 U.S.C. 801 et seq.). Controlled substances are drugs or chemicals that are prohibited or strictly regulated because of their potential for abuse or addiction. The Drug Enforcement Administration (DEA), which is primarily responsible for enforcing the CSA, oversees the classification of controlled substances into five schedules. Schedule I contains illicit drugs, such as marijuana and heroin, which have no legitimate medical use under Federal law. Schedules II–V contain legal drugs which are available only by prescription because of their potential for abuse. Currently, FRA routinely conducts post-accident tests for the following drugs: marijuana, cocaine, phencyclidine (PCP), and certain opiates, amphetamines, barbiturates, and benzodiazepines.

As detailed below, FRA research indicates that prescription and OTC drug use has become prevalent among railroad employees. For this reason FRA is proposing to add certain non-controlled substances to its standard post-accident testing program, which currently routinely tests only for alcohol and controlled substances. At this time, FRA intends to add two types of non-controlled substances, tramadol (a synthetic opioid) and sedating antihistamines. Publication of this NPRM, however, in no way limits FRA's post-accident testing to the identified substances or in any way restricts FRA's ability to make routine amendments to its standard post-accident testing panel without prior notice. Furthermore, in addition to its standard post-accident testing panel, FRA always has the ability to test for ''other impairing substances specified by FRA as necessary to the particular accident investigation.'' *See* 49 CFR 219.211(a). This flexibility is essential, since it allows FRA to conduct post-accident tests for any substance (e.g., carbon

monoxide) that its preliminary investigation shows may have played a role in an accident.

FRA is proposing to add tests for certain non-controlled substances to respond to the significant rise in prescription and OTC drug use in the more than 25 years since FRA began post-accident testing. In 2006, an ongoing telephone survey about the use of medications by U.S. adults found that 82 percent took at least one prescription or OTC drug, dietary supplement, or herbal remedy, each week. *See Slone Epidemiology Center at Boston University, Patterns of Medications Use in the United States (2006).* Also in 2006, a study commissioned by the National Community Pharmacists Association (NCPA) found that up to 75 percent of Americans reported not always taking their prescription medication as directed, 49 percent reported forgetting to take a prescribed medication, 31 percent reported not filling a prescription, 29 percent reported stopping use of a medication before its supply ran out, and 24 percent reported taking less than the recommended dosage. *See National Community Pharmacists Association, Take as Directed: A Prescription Not Followed (2006).* Today, the Physician's Desk Reference contains over 13,000 prescription drugs, most of which are non-controlled substances.

In 1998, FRA first expressed concerns that § 219.103, which addresses the use of Schedule II–V controlled substances by safety-sensitive employees, may be too narrow to cover the use of prescription and OTC drugs since most of these drugs are not controlled substances. To supplement § 219.103, FRA issued Safety Advisory 98–3 (Advisory), *Recommended practices for the safe use of prescription and over-the-counter drugs by safety-sensitive railroad employees,* which made recommendations to railroads on how to handle prescription and OTC drug use by their safety-sensitive employees. *See* 63 FR 71334, December 24, 1998.

After issuing this Advisory, FRA initiated two projects to research whether the prevalence of prescription drugs should be more closely evaluated and monitored as a possible safety concern in the rail industry. As detailed below, both projects found that prescription and OTC drug use was prevalent among railroad employees involved in reportable accidents.

In the first project, which lasted from April 2002 to April 2009, FRA asked railroad employees who had been involved in human-factor accidents that were reportable under FRA's accident reporting regulations at 49 CFR part 225 to complete FRA surveys on their recent prescription and OTC drug use. Of the 294 human-factor accidents surveyed, only 20 percent had no employee self-reports of drug use (this 20 percent also included accidents where employees would not complete questionnaires or could not be located). In the 80 percent of surveyed accidents where prescription or OTC drug use, or both, had been self-reported, employees listed a wide variety of generic and brand name drugs, with many employees listing multiple prescription and OTC drugs, as well as dietary supplements and herbal preparations.

In 2005, FRA began a second research project that partially responded to one in a series of recommendations to FRA made by the National Transportation Safety Board (NTSB) concerning the use of prescription and OTC drugs by safety-sensitive employees. (The NTSB made similar recommendations to DOT and other DOT agencies.)

R–00–004: Establish in coordination with the U.S. Department of Transportation, the Federal Motor Carrier Safety Administration, the Federal Transit Administration, and the U.S. Coast Guard, comprehensive toxicological testing requirements for an appropriate sample of fatal highway, railroad, transit, and marine accidents to ensure the identification of the role played by common prescription and over-the-counter medications. Review and analyze the results of such testing at intervals not to exceed 5 years.

In this project, FRA re-tested a sample of 150 frozen post-accident testing urine specimens that had previously been reported as negative for the substances in the agency's standard post-accident drug testing panel. After redacting any identifying employee information, FRA used a commercially available medical professional drug testing panel to re-test these specimens for commonly used prescription and OTC drugs with known risks of adverse side effects, such as pain relievers, anti-depressants, and sedating antihistamines. Of the 150 re-tested samples, 14 (9.3 percent) tested positive for at least one potentially impairing prescription or OTC drug. These post-accident re-testing results confirmed those of FRA's human-factor accident survey, by also showing that prescription and OTC drug use was prevalent among railroad employees.

Proposed Addition of Tests for Non-Controlled Substances

Because FRA's post-accident testing program predates both DOT's testing procedures (49 CFR part 40) and the Omnibus Transportation Employee Testing Act of 1991, neither part 40 nor Department of Health and Human Services (HHS) guidelines apply to post-accident testing procedures and protocols. *See* 49 CFR 40.1. All post-accident tests are conducted on behalf of FRA by a single laboratory (FRA is revising appendix B to 49 CFR Part 219 to designate Quest Diagnostics as its post-accident testing laboratory) in accordance with FRA specifications. FRA conducts compliance and quality audits of the laboratory each quarter.

As explained above, FRA intends to add testing for two types of non-controlled substances (tramadol (a synthetic opioid) and sedating antihistamines) to its standard post-accident testing program to address the widespread use of prescription and OTC drugs by railroad employees. Both tramadol and the drugs in the sedating antihistamine category have potential side effects that could impair an employee's cognitive abilities (such as the ability to stay awake and alert or the ability to recognize and take appropriate emergency action) or cause impairing conditions (such as dizziness, agitation, and loss of coordination). These drugs are discussed below:

- *Tramadol.* Tramadol is a semi-synthetic opioid. Opioids can be natural (e.g., codeine and morphine), semi-synthetic (e.g., oxycodone and hydromorphone), or wholly synthetic in origin (e.g., methadone). All opioids, regardless of origin, pose risks of sedation, and can cause abuse and dependence with prolonged use.
- *Sedating antihistamines.* This widely used category of drugs includes, but is not limited to, diphenhydramine, chlorpheniramine, brompheniramine, and doxylamine. Sedating antihistamines are used primarily to treat allergy and cold symptoms, but may also be used as sleep aids or as treatment for allergic reactions such as itching and swelling. As their name implies, sedating antihistamines (as opposed to non-sedating antihistamines such as loratadine) have a known tendency to cause drowsiness. Because of this tendency, the manufacturer's instructions on the packaging and labeling of sedating antihistamines caution against use while driving, operating machinery, or performing tasks where alertness is required. Although these drugs are available at both prescription and OTC dosages, sedating anithistamines are usually taken as OTC drugs.

Adding testing for these types of non-controlled substances to its post-accident testing program will enable FRA to detect a broader range of potentially impairing drugs that may contribute to the cause or severity of accidents. As FRA has done for the

controlled substances in its standard post-accident panel, FRA would consult with forensic toxicologists to establish screening and confirmation limits and administrative cut-offs for these non-controlled substances.

Although FRA is not proposing any change in its handling of post-accident test results for controlled substances in accordance with 49 CFR 219.211, FRA is proposing to handle the post-accident results for non-controlled substances differently. Specifically, as mentioned earlier, while sedating antihistamines are available at both prescription and OTC dosages, they are usually taken as OTC drugs. Since by definition these drugs can cause sedation, in 2009 FRA began post-accident testing for sedating antihistamines to determine whether their use is becoming a safety issue in the rail industry. This testing has been for research and accident investigation purposes only, and FRA has not reported any sedating antihistamine test results to railroads or employees. FRA intends to continue its research testing related to sedating antihistamines and in this NPRM proposes to continue to keep the testing results confidential and not report to the relevant railroad or employee any sedating antihistamine post-accident test results. FRA seeks comment on this proposal (i.e., whether the agency should continue to keep post-accident test results for sedating antihistamines confidential).

In contrast, while tramadol is also a non-controlled substance, it is a prescription-only semi-synthetic opioid that can cause drowsiness and dizziness. FRA is seeking specific comments on how it should handle tramadol post-accident test results. Should FRA release post-accident test results for tramadol as it does for other opioids that are controlled substances? Should FRA keep post-accident results for tramadol confidential as it proposes to continue doing for sedating antihistamines? Is there another approach that would better handle tramadol test results?

The proposed addition of these non-controlled substances to FRA's standard post-accident program would not create new direct costs for employers since FRA would bear the costs of the additional post-accident tests. Any additional costs to employers would be minimal and indirect, such as the cost of responding to an increased number of positive post-accident test results should FRA decide to report tramadol or sedating antihistamine results, or both.

Contents of Standard Post-Accident Testing Box

As mentioned above, FRA's post-accident testing program has been in existence since 1985. FRA has received suggestions from railroad representatives, collectors, and others on how to make the program's requirements easier to understand and follow. Although not directly related to the regulatory proposals in this NPRM, FRA is incorporating some of these suggestions into its post-accident testing program. For example, FRA is amending the contents of its standard post-accident testing box, which contains instructions, forms and supplies for the collection of urine and blood samples from three surviving employees. (FRA is not changing the contents of its fatalities post-accident testing box.) FRA is updating Form FRA F 6180.74, Post-Accident Testing Blood/Urine Custody and Control Form (Form 74) by deleting outdated information requests (e.g., removing the space for identification of the employee's home terminal in Step 1), streamlining the chain of custody documentation in Step 5, and making other miscellaneous amendments. (FRA is not changing Form FRA F 6180.73, Accident Information Required for Post-Accident Toxicological Testing.) FRA will also add new guidance documents to the contents of its standard post-accident testing box to familiarize individuals who may become involved in the collection of post-accident samples but who do not regularly work with the rail industry (e.g., employees of independent medical facilities and local law enforcement officers) with the post-accident testing program's basis, purpose, and requirements.

Section-by-Section Analysis

Section 219.5—Definitions

As mentioned above, in FRA's survey of employees involved in reportable human factor accidents, many employees self-reported using multiple substances; most of these, whether prescription drugs, OTC drugs, dietary supplements, or herbal preparations, were non-controlled substances. Part 219 already defines a controlled substance, but FRA believes that a definition of a non-controlled substance is necessary now to help employees better understand the variety of substances available. FRA would define a non-controlled substance as any substance that the DEA has not classified as a controlled substance under the CSA.

Section 219.13—Preemptive Effect

FRA is proposing to remove this section from part 219. FRA believes that the preemption language in paragraph (a) of this section is unnecessary because 49 U.S.C. 20106 does not require additional Federal regulatory provisions concerning a regulation's preemptive effect. As stated in the Federalism Implications statement of this NPRM, part 219 could have preemptive effect by operation of law under the Federal Rail Safety Act (FRSA). *See* 49 U.S.C. 20106.

As discussed below, however, FRA is proposing to add language similar to that currently found in paragraph (b) of this section to a new paragraph (c) in § 219.17, clarifying the lack of impact that part 219 has on State criminal law. FRA is keeping this language in part 219 because it is instructive and consistent with long-standing FRA guidance.

Section 219.17—Construction

FRA is proposing to add a new paragraph (c) to this section that would contain language similar to that currently found in § 219.13(b). This language would state that part 219 does not impact State criminal laws imposing sanctions for reckless conduct that leads to actual loss of life, injury, or damage to property, whether such provisions apply specifically to railroad employees or the public at large. As noted above, similar language is currently found in § 219.13(b) and FRA is not proposing any substantive change with this amendment.

Section 219.211—Analysis and Follow-Up

In the second sentence of paragraph (a), FRA proposes to replace the phrase ''alcohol and controlled substances specified by FRA'' with ''alcohol, controlled substances, and non-controlled substances specified by FRA'' to add routine testing for non-controlled substances to its post-accident testing program. From this same sentence, FRA also proposes to delete the reference to submittal of FRA post-accident testing protocols to HHS. As stated earlier, FRA's post-accident testing program is exempted from HHS guidelines. Finally, FRA would add a sentence stating that substances may be tested for in any form, whether naturally or synthetically derived, since controlled substances can be derived from many sources (e.g., opiates can be natural, synthetic, or semi-synthetic in origin.)

FRA also proposes to amend the first sentence of paragraph (b) in this section to limit reporting of post-accident test results to results for controlled

substances only. As mentioned above, FRA is asking for comments on how to handle the reporting of post-accident test results of non-controlled substances (tramadol and sedating antihistamines). FRA may make additional amendments to this paragraph after it has considered any comments received.

Regulatory Impact and Notices

Executive Order 12866 and 13563 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures under both Executive Order 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034; February 26, 1979. FRA has prepared and placed in the docket (FRA–2010–0155) a regulatory impact analysis addressing the economic impact of this proposed rule.

As part of the regulatory impact analysis, FRA has assessed pertinent costs expected from the implementation of this proposed rule. FRA has not found any costs associated with this NPRM for the regulated industry. Any associated costs for conducting post-accident testing for non-controlled substances would be nominal and assumed by the Federal government in their entirety. Railroads would not be required to change their collection process and would have to follow the same collection, shipping, and handling processes they currently follow. This means that individuals subject to post-accident testing would provide the same specimens currently required, which would then be tested for tramadol and sedating antihistamines at FRA's expense. Since FRA would use these results for research and accident investigation purposes only, tramadol and sedating antihistamines test results would not be reported directly to either the employee or the employing railroad. This reporting process would apply to both surviving and fatally injured employees. No monetary costs would be imposed on the industry as a result of this addition.

As part of the regulatory impact analysis, FRA has explained what the likely benefits for this proposed rule would be, and provided numerical assessments of the potential value of such benefits. The proposed inclusion of tramadol and sedating antihistamines would generate safety benefits. Qualitative benefits would be generated with the inclusion of sedating antihistamines and tramadol in the post-accident testing panel by providing FRA with the data necessary to carry out research to inform future policy on this topic. The NPRM would generate quantifiable benefits upon the addition of sedating antihistamines to the post-accident testing panel by creating a small deterring effect on the use of sedating antihistamines by railroad workers and encouraging the use of alternative medications for allergic relief. Thus, in general, the proposed rule should reduce railroad accidents and their associated casualties and damages. FRA believes the value of the anticipated safety benefits would exceed the cost to the industry of implementing the proposed rule. Over a 10-year period, this analysis finds that $2.3 million in benefits would accrue through accident prevention. The discounted value of this is $1.9 million (PV, 7 percent). The table below presents the estimated benefits associated with the proposed rule.

10-YEAR ESTIMATED BENEFITS OF PROPOSED RULE

[in millions]

	Benefits	PV, 7%
Tramadol	$0	$0
Sedating Antihistamines	2.3	1.9
Total	2.3	1.9

Dollars are discounted at a Present value rate of 7 percent.

Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and Executive Order 13272 require a review of proposed and final rules to assess their impacts on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. FRA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The revised information collection requirements in this proposed rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. The section that contains the revised information collection requirement and the estimated time to fulfill this requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
219.211—Analysis and Follow-up—Reports of Positive Post-Accident Toxicological Test (Controlled Substances) to Medical Review Officer and Employee (Revised Requirement).	698 railroads	16 reports + 16 report copies.	15 minutes + 5 minutes	5

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether this information collection requirement is necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirement; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the

use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirement should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov*.

OMB is required to make a decision concerning the collection of information requirement contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirement resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 4, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation. FRA has analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132. This NPRM complies with a statutory mandate, and FRA believes it is in compliance with Executive Order 13132.

This NPRM will not have a substantial effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, this NPRM will not have any federalism implications that impose substantial direct compliance costs on State and local governments.

This NPRM could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former FRSA, repealed and recodified at 49 U.S.C 20106. The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''local safety or security hazard'' exception to section 20106.

Environmental Impact

FRA has evaluated this proposed rule in accordance with its ''Procedures for Considering Environmental Impacts'' (''FRA's Procedures'') (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). The value equivalent of $100 million in CY 1950, adjusted annually for inflation to CY 2008 levels by the Consumer Price Index for All Urban Consumers (CPI–U) is $141.3 million. This assessment may be included in conjunction with other assessments, as it is here. The proposed rule would not create an unfunded mandate in excess of the threshold amount.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this proposed rule in accordance with Executive Order 13211, and determined that it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy.

Privacy Act

FRA wishes to inform all interested parties that anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the

document (or signing the document), if submitted on behalf of an association, business, labor union, etc.). Interested parties may also review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *http://www.dot.gov/privacy.html*.

List of Subjects in 49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposed Rule

For the reasons stated above, FRA proposes to amend part 219 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 219—[AMENDED]

1. The authority citation for part 219 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Amend § 219.5 by adding the following definition for ''*Non-controlled substance*'' in alphabetical order to read as follows:

§ 219.5 Definitions.

* * * * *

Non-controlled substance means any substance (including prescription medications, over-the-counter products, dietary supplements, and herbal preparations) which is not currently regulated under 21 U.S.C. 801–971 or 21 CFR part 1308.

* * * * *

§ 219.13 [Removed and Reserved]

3. Remove and reserve § 219.13.

4. Amend § 219.17 by adding paragraph (c) to read as follows:

§ 219.17 Construction.

* * * * *

(c) Impacts provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

5. Amend § 219.211 by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 219.211 Analysis and follow-up.

(a) The laboratory designated in appendix B to this part undertakes prompt analysis of specimens provided under this subpart, consistent with the need to develop all relevant information and produce a complete report. Specimens are analyzed for alcohol, controlled substances, and non-controlled substances specified by FRA under protocols specified by FRA. These substances may be tested for in any form, whether naturally or synthetically derived. Specimens may be analyzed for other impairing substances specified by FRA as necessary to the particular accident investigation.

(b) Results of post-accident toxicological testing for controlled substances conducted under this subpart are reported to the railroad's Medical Review Officer and the employee. * * *

* * * * *

6. Revise Appendix B to part 219 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: Quest Diagnostics, 1777 Montreal Circle, Tucker, GA 30084, Telephone: (800) 729–6432.

Issued in Washington, DC, on May 10, 2012.

Melissa L. Porter,

Chief Counsel.

[FR Doc. 2012–11969 Filed 5–16–12; 8:45 am]

BILLING CODE 4910–06–P