

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket Nos. 98-43, 94-149; FCC 98-281]

Commercial Television Station Children's Programming Report and Commercial Broadcast Station Ownership Report**AGENCY:** Federal Communications Commission.**ACTION:** Final rule; announcement of effective dates.

SUMMARY: These rules announce the effective date of the rules published on December 18, 1998. Those rules amended the Commission's rules governing the manner of filing of the commercial television station children's programming report (FCC Form 398) and the information to be set forth in the commercial broadcast station ownership report (FCC Form 323). The Commission concluded that commercial television station licensees would be required to file their stations' FCC Form 398s in electronic form and that persons holding attributable interests in commercial broadcast station permittees and licensees would be required to disclose their gender and race or ethnicity when filing FCC Form 323.

DATES: Sections 73.3526(e)(11)(iii) and 73.3615(a) published at 63 FR 70040 (December 18, 1998) are effective on December 31, 1998.

FOR FURTHER INFORMATION CONTACT: James J. Brown, Mass Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: On December 8, 1998 the Office of Management and Budget ("OMB") approved the amendments to the public file rules pursuant to OMB Control No. 3060-0754, and on December 8, 1998, OMB approved the amendments to the broadcast station ownership filing rules pursuant to OMB Control No. 3060-0010.

Accordingly, the rules in Sections 73.3526(e)(11)(iii) and 73.3615(a) will be effective on December 31, 1998.

List of Subjects in 47 CFR Part 73

Television broadcasting, Radio and Television Broadcasting.

Federal Communications Commission.

William F. Caton,
Deputy Secretary.

[FR Doc. 98-34471 Filed 12-29-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Part 219**

[Docket No. RSOR-6; Notice No. 47]

RIN 2130-AB31

Random Drug and Alcohol Testing: Determination of 1999 Minimum Testing Rate**AGENCY:** Federal Railroad Administration (FRA), Transportation (DOT).**ACTION:** Notice of Determination.

SUMMARY: Under FRA's regulations on drug and alcohol testing, each year the Federal Railroad Administrator (Administrator) determines the minimum annual percentage rate for random drug and alcohol testing for the rail industry. Currently, the minimum rates for both drug and alcohol random testing are set at 25 percent.

After reviewing the rail industry drug and alcohol management information system (MIS) data for 1996 and 1997, as well as data from compliance reviews of rail industry drug and alcohol testing programs, the Administrator has determined that the minimum annual random drug and alcohol testing rates for the period January 1, 1999 through December 31, 1999 will remain at 25 percent of covered railroad employees.

DATES: This notice is effective December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Assurance and Compliance, Operating Practices Division (RRS-11), FRA, 1120 Vermont Avenue, N.W., Mail Stop 25, Washington, D.C. 20590, (telephone: 202-493-6313) or David H. Kasminoff, Esq., Trial Attorney (RCC-12), Office of Chief Counsel, FRA, Washington, D.C. 20590 (telephone: 202-493-6043).

SUPPLEMENTARY INFORMATION:**Administrator's Determination of 1999 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 and alcohol testing rates according to the rail industry's overall violation rate, which is determined using annual railroad drug and alcohol program data taken from FRA's MIS. Based on this and other program 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 and 219.608, respectively).

Under this performance-based system, FRA may 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 consecutive calendar years while testing at the 50 percent 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 and the findings from program compliance reviews, before deciding whether to lower annual minimum random testing rates). 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.

The minimum random drug testing rate for any administration in DOT is 25 percent. In this notice, FRA announces that the minimum random drug testing rate will continue to be 25 percent of covered railroad employees for the period January 1, 1999 through December 31, 1999, since the industry random positive rate for 1997 was 0.77 percent.

Administrator's Determination of 1999 Random Alcohol Testing Rate

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than 0.5 percent for two consecutive calendar years while testing at the 25 percent rate. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. If the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the rate will remain at 25 percent.

Although the 1996 MIS report indicated an industry-wide positive rate of 0.24 percent and the 1997 MIS report indicated a positive rate of 0.23 percent, FRA audits of railroad programs for the past two years revealed problems with random testing programs, particularly with the predictability of testing for alcohol which has caused FRA to question the credibility of the data. Deficiencies uncovered in these audits indicated almost no alcohol testing at the beginning of the duty day and failure to distribute testing throughout the duty day (e.g., testing only during a four hour period in the middle of the day or only on Thursdays, and/or never

testing at night or on weekends), thus making the timing of random alcohol testing too predictable. FRA has alerted railroads to the need to conduct random alcohol tests at all times to achieve deterrence and more accurately capture the prevalence of alcohol abuse throughout the duty period.

Because of these systemic program deficiencies, FRA will not lower the minimum random alcohol testing rate further at this time. Instead, FRA will continue to audit industry testing programs and assist railroads in achieving compliance and producing credible prevalence data. When FRA has confidence that rail industry data is derived from programs fully in compliance with random testing requirements, FRA will reevaluate whether to lower the minimum random alcohol testing rate to 10 percent.

Issued in Washington, D.C. on December 22, 1998.

Donald M. Itzkoff,

Deputy Federal Railroad Administrator.

[FR Doc. 98-34390 Filed 12-29-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 219 and 225

[FRA-98-4898, Notice No. 1]

[RIN 2130-AB30]

Annual Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents

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

ACTION: Final rule.

SUMMARY: This final rule establishes at \$6,600 the monetary threshold for reporting railroad accidents/incidents involving railroad property damage that occur during calendar year 1999. There is no change from the reporting threshold for calendar year 1998. This action is needed to ensure and maintain comparability between different years of data by having the threshold keep pace with any increases or decreases in equipment and labor costs so that each year accidents involving the same minimum amount of railroad property damage are included in the reportable accident counts. The reporting threshold was last reviewed and changed in 1997.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Robert L. Finkelstein, Staff Director,

Office of Safety Analysis, RRS-22, Mail Stop 25, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-493-6280); or Nancy L. Friedman, Trial Attorney, Office of Chief Counsel, RCC-12, Mail Stop 10, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-493-6034).

SUPPLEMENTARY INFORMATION:

Background

Rail equipment accidents/incidents are collisions, derailments, explosions, fires, acts of God, and other events (including grade crossing accidents) involving the operation of standing or moving on-track equipment that result in damages higher than the current reporting threshold to railroad on-track equipment, signals, track, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. 49 CFR 225.19(b), (c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). *Id.*

As revised in 1997, paragraphs (c) and (e) of 49 CFR 225.19, provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted, if necessary, every year in accordance with the procedures outlined in appendix B to part 225, to reflect any cost increases or decreases. 61 FR 30942, 30969 (June 18, 1996); 61 FR 60632, 60634 (Nov. 29, 1996); 61 FR 67477, 67490 (Dec. 23, 1996).

New Reporting Threshold

One year has passed since the accident/incident reporting threshold was last reviewed and revised. 62 FR 63675 (Dec. 2, 1997). Consequently, FRA has recalculated the threshold, as required by § 225.19(c), based on increased costs for labor and decreased costs for material. FRA has determined that the current reporting threshold of \$6,600, which applies to rail equipment accidents/incidents that occur during calendar year 1998, should remain the same for calendar year 1999, effective January 1, 1999.

Accordingly, §§ 225.5 and 225.19, and Appendix B have been amended to state the reporting threshold for calendar year 1999 and the most recent cost figures and the calculations made to determine that threshold. Finally, the alcohol and drug regulations (49 CFR part 219) are also amended to reflect that the reporting threshold for calendar year 1999 is \$6,600.

Notice and Comment Procedures

In this rule, FRA merely recalculates the monetary reporting threshold based on the formula adopted, after notice and comment, in the final rule published June 18, 1996, 61 FR 30959, 30969, and discussed in detail in the final rule published November 29, 1996, 61 FR 30632. FRA further finds that both the current cost data inserted into this pre-existing formula and the original cost data that they replace were obtained from reliable Federal government sources. FRA further finds that this rule imposes no additional burden on any person, but rather provides a benefit by permitting the valid comparison of accident data over time. Accordingly, FRA concludes that notice and comment procedures are impracticable, unnecessary, and contrary to the public interest. As a consequence, FRA is proceeding directly to this final rule.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing regulatory policies and procedures and is considered to be a nonsignificant regulatory action under DOT policies and procedures (44 FR 11034; February 26, 1979). This final rule also has been reviewed under Executive Order 12866 and is also considered "nonsignificant" under that Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule will have no new significant direct or indirect economic impact on small units of government, business, or other organizations. To the extent that this rule has any impact on small units, the impact will be neutral because the rule is maintaining, rather increasing, their reporting burden.

Paperwork Reduction Act

There are no new information collection requirements associated with this final rule. Therefore, no estimate of a public reporting burden is required.

Environmental Impact

This final rule will not have any identifiable environmental impact.

Federalism Implications

This final rule will not have a substantial effect on the States, on the