

FOR FURTHER INFORMATION CONTACT:

Adrienne Y. Denysyk, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 09-122, adopted December 31, 2009, and released January 4, 2010. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://fjallfoss.fcc.gov/ecfs/>). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via the company's Web site, <http://www.bcipweb.com>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Maine, is amended by adding

channel 13 and removing channel 19 at Bangor.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. 2010-329 Filed 1-11-10; 8:45 am]

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

[Docket No. 2001-11213, Notice No. 13]

RIN 2130-AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2010

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

ACTION: Notice of Determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2008 rail industry random testing positive rates were 0.46 percent for drugs and 0.15 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, 2010, through December 31, 2010, 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, 2010, through December 31, 2010.

DATES: This notice is effective upon publication.

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 2010 Minimum Random Drug and Alcohol Testing Rates

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 positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this 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.

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent of covered railroad employees whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at a 50 percent minimum 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, before deciding whether to lower annual minimum random testing rates. If the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year, FRA will return the minimum random drug testing rate to 50 percent of covered railroad employees.

If the industry-wide random alcohol violation rate is less than 1.0 percent but greater than 0.5 percent, the minimum random alcohol testing rate will be 25 percent of covered railroad employees. FRA will raise the minimum random rate to 50 percent of covered railroad employees if the industry-wide random alcohol violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent of covered railroad employees whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at a higher rate.

In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2010 through December 31, 2010, because the industry random drug testing positive rate was below 1.0 percent for the last two years (the drug testing positive rate was .046 percent in 2008 and .056 percent in 2007). The minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2010 through December 31, 2010, because the industry-wide violation rate for alcohol has remained

below 0.5 percent for the last two years (the industry-wide violation rate for alcohol was .015 percent in 2008 and .018 percent in 2007). Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC, on January 6, 2010.

Joseph C. Szabo,
Administrator.

[FR Doc. 2010-374 Filed 1-11-10; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: NHTSA-2009-0050]

RIN 2127-AK46

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the Insurer Reporting Requirements. The regulations specify the requirements for annual insurer reports and lists in appendices those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices must file three copies of its report for the 2006 calendar year before October 25, 2009 as specified by law, but we acknowledge this notice has not been published by that date. Therefore, NHTSA will not take enforcement actions against any insurer that file the 2006 insurer reports after October 25, 2009, but not later than December 31, 2009. This is a one-time exception, based on the unique circumstances for 2009. All subsequent reports must be filed not later than October 25th of the year in which the reports are due. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25th.

DATES: This final rule becomes effective on February 11, 2010. Insurers listed in the appendices were required to submit reports on or before December 31, 2009. If you wish to submit a petition for reconsideration of this rule, your petition must be received by February 26, 2010.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, National

Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Room W41-307, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., West Building, Room W43-439, Washington, DC 20590, by electronic mail to carlita.ballard@dot.gov. Ms. Ballard's telephone number is (202) 366-0846. Her fax number is (202) 493-2990.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 33112, *Insurer reports and information*, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Pursuant to 49 U.S.C. Section 33112(f), the following insurers are subject to the reporting requirements:

(1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state and;

(3) rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term "small insurer" is defined, in Section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for

less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (49 CFR Part 544; 52 FR 59, January 2, 1987), NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler, since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best¹ publishes in its *State/Line Report* each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer;

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a

¹ A.M. Best Company is a well-recognized source of insurance company ratings and information. 49 U.S.C. 33112(f) authorizes NHTSA to consult with public and private organizations as necessary.