

Dated: January 12, 2004.

Anne Jillson,

Foreign Affairs Officer, Department of State.

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. 2001-11213, Notice No. 3]

RIN 2130-AA81

#### Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2004

AGENCY: Federal Railroad  
Administration (FRA), DOT.

ACTION: Notice of determination.

**SUMMARY:** Using data from Management Information System annual reports, FRA has determined that the 2002 rail industry random testing positive rate was 0.79 percent for drugs and 0.19 percent for alcohol. Since the industry-wide random drug testing positive rate continues to be below 1.0 percent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2004 through December 31, 2004 will remain at 25 percent of covered railroad employees. Since the 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, 2004 through December 31, 2004.

**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, 1120 Vermont Avenue, NW., Washington, DC 20005, (Telephone: (202) 493-6313).

#### SUPPLEMENTARY INFORMATION:

#### Administrator's Determination of 2004 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, 608).

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 calendar years while testing at 50 percent. (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). 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.

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, if the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the rate will be 25 percent. 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. 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 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, 2004 through December 31, 2004, since the industry random drug testing positive rate for 2002 was 0.79 percent. Since the industry-wide violation rate for alcohol has remained below 0.5 percent for the last two years, FRA is maintaining the minimum random alcohol testing rate at 10 percent of covered railroad employees for the period January 1, 2004 through December 31, 2004. Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC, on January 12, 2004.

Allan Rutter,

Administrator.

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2001-10044; Notice 3]

#### Reliance Trailer Co., LLC.; Receipt of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

Reliance Trailer Co., LLC, of Spokane, Washington (Reliance), has applied for a renewal of a temporary exemption of its dump body trailer from Federal Motor Vehicle Safety Standard No. 224, *Rear Impact Protection* (FMVSS No. 224). In accordance with 49 U.S.C. 30113(b)(3)(B)(i), the basis of the request is that compliance would cause substantial economic hardship to a manufacturer that has made a good faith effort to comply with the standard.

We are publishing this notice of receipt of the renewal application in accordance with the requirements of 49 U.S.C. 30113(b)(2). This action does not represent any judgment of the agency on the merits of the application.

On October 22, 2001, NHTSA granted Reliance a two-year hardship exemption from the requirements of FMVSS No. 224.<sup>1</sup> That exemption expired on October 1, 2003. Reliance petitioned for renewal on September 24, 2003. Because Reliance did not apply for a renewal more than 60 days prior to expiration of the original exemption, the petitioner is no longer subject to the October 22, 2001 exemption.<sup>2</sup>

FMVSS No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 kg or more, including Reliance's dump body trailers, be fitted with a rear impact guard that conforms to Standard No. 223, *Rear Impact Guards*.

In the original petition, Reliance argued that a rear impact guard prevented its trailers from properly discharging asphalt into paving equipment. According to petitioners, compliance with FMVSS No. 224 rendered their dump body trailers useless for performing their intended function. During the two-year temporary exemption period, Reliance anticipated acquiring the revenue necessary to design a complex retractable rear impact guard that would allow for proper interaction with paving equipment. However, petitioners now state that they have not been able to arrive at a practical, and economic solution for

<sup>1</sup> For background information on the company please see original petition (66 FR 36032).

<sup>2</sup> See 49 CFR 555.8(e).