

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of random drug and alcohol testing rates.

**SUMMARY:** This notice announces the random testing rates for employers subject to the Federal Transit Administration's (FTA) drug and alcohol rules.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jerry Fisher, Drug and Alcohol Program Manager for the Office of Safety and Security, (202) 366-2896 (telephone) and (202) 366-7951 (fax). Electronic access to this and other documents concerning FTA's drug and alcohol testing rules may be obtained through the FTA World Wide Web home page at <http://www.fta.dot.gov>, click on "Safety and Security."

**SUPPLEMENTARY INFORMATION:** The FTA required large transit employers to begin drug and alcohol testing employees performing safety-sensitive functions on January 1, 1995, and to report, annually by March 15 of each year beginning in 1996, the number of such employees who had a verified positive for the use of prohibited drugs, and the number of such employees who tested positive for the misuse of alcohol. Small employers commenced their FTA-required testing on January 1, 1996, and began reporting the same information as the large employers beginning March 15, 1997. The 1994 rules, which were updated on August 1, 2001, established a random testing rate for prohibited drugs and the misuse of alcohol.

The rules require that employers conduct random drug tests at a rate equivalent to at least 50 percent of their total number of safety-sensitive employees for prohibited drug use and at least 25 percent of the misuse of alcohol. The rules provide that the drug random testing rate may be lowered to 25 percent if the "positive rate" for the entire transit industry is less than one percent for two preceding consecutive years. Once lowered, it may be raised to 50 percent if the positive rate equals or exceeds one percent for any one year ("positive rate" means the number of positive results for random drug tests conducted under part 655.45 plus the number of refusals of random tests required by part 655.49, divided by the total number of random drug tests, plus

the number of refusals of random tests required by part 655.)

The alcohol provisions provide that the random rate may be lowered to 10 percent if the "violation rate" for the entire transit industry is less than .5 percent for two consecutive years. It will remain at 25 percent if the "violation rate" is equal to or greater than .5 percent but less than one percent, and it will be raised to 50 percent if the "violation rate" is one percent or greater for any one year. ("violation rate" means the number of covered employees found during random tests given under part 655.45 to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by part 655.49, divided by the total reported number of random alcohol tests plus the total number of refusals of random tests required by part 655.)

In 2003, the FTA required a random drug testing rate of 50 percent of the total number of their "safety-sensitive" employees for prohibited drugs based on the "positive rate" for random drug test data from 2000 and 2001. FTA has received and analyzed the 2002 data from a representative sample of transit employers. Because the random drug rate was not lower than 1.0 percent for the two preceding consecutive years (0.89 percent for 2001 and 1.05 percent for 2002), the random drug testing rate will remain at 50 percent for 2004.

In 2003, the FTA retained the random alcohol testing rate of 10 percent (reduced previously from 25 percent) based on the "positive rate" for random alcohol test data from 2000 and 2001. Because the random alcohol violation rate was again lower than .5 percent for the two preceding consecutive years (0.19 percent for 2001 and 0.22 for 2002), the random alcohol testing rate will remain at 10 percent for 2004.

FTA detailed reports on the drug and alcohol testing data collected from transit employers may be obtained from the Office of Safety and Security, Federal Transit Administration, 400 Seventh Street, SW., Room 9301, Washington, DC 20590, (202) 366-2896 or at <http://transit-safety.volpe.dot.gov/Publications>.

Issued on: December 30, 2003.

**Jennifer L. Dorn,**  
*Administrator.*

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**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board****Release of Waybill Data**

The Surface Transportation Board has received a request from Sidley Austin Brown & Wood LLP on behalf of Canadian Pacific Railway Company (WB471-8-December 19, 2003) for permission to use certain data from the Board's Carload Waybill Samples. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

**FOR FURTHER INFORMATION CONTACT:** Mac Frampton, (202) 565-1541.

**Vernon A. Williams,**  
*Secretary.*

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**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board**

[STB Docket No. AB-167 (Sub-No. 1184X)]

**Consolidated Rail Corporation—  
Abandonment Exemption—in  
Middlesex County, NJ**

Consolidated Rail Corporation (Conrail) has filed a notice of exemption<sup>1</sup> under 49 CFR 1152 Subpart

<sup>1</sup> By decision served in this proceeding on December 5, 2003, the Board rejected Conrail's notice of exemption filed on November 21, 2003, for Conrail's failure to comply with the environmental requirements of 49 CFR 1105.7(b) and 49 CFR 1105.8(c). On December 16, 2003, Conrail requested the Board to reinstate the notice of exemption. Conrail submitted, as Exhibit A, a copy of its letter indicating that copies of the environmental and historic report (report) were sent to the specified agencies on October 16, 2003, in compliance with 49 CFR 1105.7 and 1105.8. Conrail stated that it updated its report based on responses it received between October 16, 2003, and November 20, 2003, but erred by not stating in the notice that it had sent the report to the required agencies on October 16, 2003, and on November 20, 2003. Conrail acknowledged that it inadvertently failed to serve a copy of the report on the National Geodetic Survey (NGS). It attached, as Exhibit B, a copy of its letter dated December 15, 2003, to NGS. Based on the information received from Conrail, the notice of exemption is now accepted.